

**OVERSIGHT OF THE U.S. SECURITIES
AND EXCHANGE COMMISSION:
WALL STREET'S COP IS FINALLY
BACK ON THE BEAT**

VIRTUAL HEARING
BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION

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OCTOBER 5, 2021
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Printed for the use of the Committee on Financial Services

Serial No. 117-51



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U.S. GOVERNMENT PUBLISHING OFFICE

46-010 PDF

WASHINGTON : 2022

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**OVERSIGHT OF THE U.S. SECURITIES
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Tuesday, October 5, 2021

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 12:02 p.m., via Webex, Hon. Maxine Waters [chairwoman of the committee] presiding.

Members present: Representatives Waters, Maloney, Velazquez, Sherman, Meeks, Scott, Green, Cleaver, Himes, Foster, Vargas, Gottheimer, Gonzalez of Texas, Lawson, Axne, Casten, Pressley, Torres, Adams, Tlaib, Dean, Ocasio-Cortez, Garcia of Illinois, Garcia of Texas, Williams of Georgia, Auchincloss; McHenry, Lucas, Posey, Luetkemeyer, Huizenga, Wagner, Barr, Williams of Texas, Hill, Emmer, Zeldin, Loudermilk, Mooney, Davidson, Budd, Kustoff, Gonzalez of Ohio, Rose, Steil, Timmons, and Taylor.

Chairwoman WATERS. The Financial Services Committee will come to order. Without objection, the Chair is authorized to declare a recess of the committee at any time.

As a reminder, I ask all Members to keep themselves muted when they are not being recognized by the Chair. The staff has been instructed not to mute Members, except when a Member is not being recognized by the Chair and there is inadvertent background noise.

Members are also reminded that they may only participate in one remote proceeding at a time. If you are participating today, please keep your camera on. And if you choose to attend a different remote proceeding, please turn your camera off.

I now recognize myself for 4 minutes to give an opening statement.

Good afternoon, and welcome back to the committee, Chair Gensler. You have a lot to restore and rebuild.

During the Trump Administration, the Commission provided minimal oversight and eliminated key protections for investors. Trump's SEC impacted Regulation Best Interest that brokers loved and investors hated. Trump's SEC approved proxy adviser and proxy access rules that corporate executives loved and shareholders roundly rejected to favor multi-billion-dollar corporations. Trump's SEC did nothing to standardize reporting of environmental, social, and governance (ESG) metrics.

Even though the financial sector's growth exploded, the number of SEC staff under Trump was reduced by 5 percent, and enforcement actions against Wall Street fell to historic lows.

And, more troubling, working families and retirees, whose hard-earned savings helped fuel the capital markets, were ignored.

Those are only a few examples, but the point is clear: Most of the policy and administrative decisions the Commission made under Trump unsurprisingly favored Wall Street, large corporations, and their lobbyists.

The SEC, under your leadership, also finds itself in the midst of a radically-changing marketplace. Millions of new and often young investors are entering the markets, but the rules of trading are stacked against them, providing larger, established participants, like hedge funds and others, exclusive access to information and trading venues not available to everyone.

In addition, the incredible growth of unregistered and volatile cryptocurrency assets, as well as the emergence of cryptocurrency intermediaries, market exchanges, and decentralized protocols, present your Agency with historic challenges.

Earlier this year, when the GameStop trading event raised significant questions about our markets, I convened a series of hearings to understand exactly what happened.

We also passed several bills addressing some of our initial findings, including my bill, H.R. 4618, the Short Sale Transparency and Market Fairness Act, which provides our markets with greater and more timely transparency regarding the positions of Wall Street hedge funds and other large asset managers.

We also marked up legislation related to gamification, payment for order flow, and legislation prohibiting market makers from trading ahead of their clients.

I look forward to hearing an update from you about what the SEC is doing, and I would like to make it clear that our investigation into the GameStop event is ongoing, and we will issue findings when our review is complete.

As chairwoman, I expect the SEC will bolster the stability of our markets. However, I am gravely concerned that the largest risk to the capital markets and the economy in the coming weeks is a train wreck we see coming: Republican Members of Congress blocking the U.S. Treasury from paying its debts.

We are now less than 2 weeks away, and my Republican colleagues are once again playing a dangerous game of chicken, even though fully one-fourth of the increase in the debt comes from Trump's tax scam, a \$2-trillion unpaid tax cut for the wealthiest Americans and billion-dollar Wall Street firms.

I hope that you, Chairman Gensler, will discuss from your vantage point what the effect will be on America's investing public and small businesses if Republicans' insistence on a government default succeeds.

I thank you for appearing before us today.

I now recognize the ranking member of the committee, the gentleman from North Carolina, Mr. McHenry, for 4 minutes.

Mr. MCHENRY. Thank you, Madam Chairwoman.

And, Chairman Gensler, thanks for being here. It is good to see you again.

The last time you were here, the Senate had just confirmed you, and it made sense that you were reluctant to speak about the direction of the Commission's agenda. But now that you have had some time to get your sea legs, I am looking forward to your discussion about regulatory priorities.

You have not been shy in the press, so I hope we can have a frank and transparent conversation here today.

On digital assets, you have made, in my view, a number of concerning and contradictory public statements regarding crypto assets and other innovative technology. When you were here in May, you stated that there was a need for additional legislation to appropriately regulate and define digital assets and digital asset exchanges.

Then, just a few weeks ago, when you testified before the Senate Banking Committee, you stated there was, "a great deal" of clarity in the law. You implied that many digital asset exchanges are underregistered security exchanges and even threatened one digital asset exchange by name.

So, which is it? Does the SEC want more legislative authority, or is it about to unleash a regulatory tsunami under existing laws?

To be frank, I have strong concerns about how you will regulate in the digital asset space and whether the law is on your side. I believe it is time for Congress to step up and provide clear guidelines that will not allow an SEC Chair to change the law by interview or statement or a statement posted on the Commission's website.

That is why earlier today, I introduced the Clarity for Digital Tokens Act of 2021. We need to nurture innovation and technology in this country, not send it overseas. This bill, which borrows from the great work of SEC Commissioner Hester Peirce, helps bring legal certainty to digital asset projects that we badly need regulatory clarity to launch.

Two other points before my time runs out. First, much of your broader agenda appears to be no more investor-friendly than the bad bills that the Majority in the House here continue to push in this committee. There is a bipartisan concern that you will use, "investor protection," as a guise for limiting everyday investor choice and run roughshod over appropriate processes in implementing your regulatory agenda.

Along the same lines, following appropriate processes doesn't seem to be your strong suit. Your move to politicize an independent Accounting Oversight Board by terminating the Chair has raised concerns about your commitment to transparency and process.

Second, it is a point you and I have spoken about, but I want to raise here. I have sent several letters that you have received that, frankly, received less than a fulsome response. That is not acceptable.

Members of this committee rightly have concerns and questions about your Agency and what it is doing and why it has undertaken certain actions. The SEC needs to respond in a timely and substantive manner.

I hope that with more time on the job, this problem will correct itself, and my expectation is that it will. Thank you for making it a priority.

Thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. Thank you very much.

I now recognize the gentleman from California, Mr. Sherman, for 1 minute.

Mr. SHERMAN. Welcome back, Chairman Gensler.

Your Agency oversees \$100 trillion of trades each year, and your budget request—and I know I echo the chairwoman on this—is quite reasonable. It accounts for less than \$1 for every \$46,000 of trade you oversee.

The Pandora Papers have shown the world that all too often, billionaires are able to easily evade taxes, and dictators then steal what tax money is collected. We need a financial system that is less accommodating to the corrupt.

Frances Haugen showed us what is behind Facebook. She is an SEC whistleblower. And I hope that you give her disclosures full consideration, given the fact that she will probably face lawsuits from Facebook.

You exercise tremendous power, but particularly over bond rating agencies and the Financial Accounting Standards Board (FASB), the two most powerful, almost completely unknown agencies in our society. And investor protection is not a guise, it is your guide, and I support [inaudible].

Chairwoman WATERS. I now recognize the gentleman from Michigan, Mr. Huizenga, for 1 minute.

Mr. HUIZENGA. Thank you, Madam Chairwoman.

And Mr. Gensler, congratulations on your new Twitter account. It appears that you, like a lot of folks, including me, were watching the Olympic Games this summer, because in one of your tweets, you compared adding company public disclosure requirements to the Olympics adding new sporting events, responding to the desires of fans.

My problem with this analogy is, frankly, you seem to think that the SEC's power and expertise in disclosure is as unlimited as the International Olympic Committee's (IOC's) power over the Games.

Well, I disagree. Just because the SEC generally does a solid job regulating disclosure about financial statements doesn't mean it is well-qualified to regulate around environmental topics.

I have a different analogy for you. To me, the SEC requiring disclosure on ESG metrics is like if we required the gymnastics judges to judge the diving events—similar, but they are not qualified.

I hope that you are going to be able to reconsider that. I look forward to this process. And I do question the wisdom of the direction that you are going on a few of these things.

I yield back the balance of my time.

Chairwoman WATERS. Thank you very much.

I want to welcome today's distinguished witness, the Honorable Gary Gensler, the Chair of the United States Securities and Exchange Commission.

You should be able to see a timer on your screen that will indicate how much time you have left, and a chime will go off at the end of your time. I would ask you to be mindful of the timer, and quickly wrap up your testimony if you hear the chime.

And without objection, your written statement will be made a part of the record.

Chair Gensler, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF THE HONORABLE GARY GENSLER, CHAIR, U.S. SECURITIES AND EXCHANGE COMMISSION (SEC)

Mr. GENSLER. Good afternoon, Chairwoman Waters, Ranking Member McHenry, and members of the committee. It is good to be back with you, and I look forward to the day when we can be there in person in that wonderful hearing room.

I am honored to appear here today for the second time as Chair of the Securities and Exchange Commission. It is customary, I will note, that my views are my own. I am not speaking on behalf of my fellow Commissioners or staff.

I have worked in and around markets my entire adult life. I believe the U.S. capital markets are the best in the world, and there are many reasons that we represent 38 percent of the world's capital markets.

But we can't take our remarkable capital markets for granted. New financial technologies continue to change the face of finance for investors, and for businesses around our country. Also, more retail investors than ever are accessing our markets, and other countries are developing deeply competitive capital markets as well.

Although I provide greater detail in my written testimony, I would like to just flag three policy broad-brush areas.

The first is market structure. Our mission at the SEC is about capital formation and facilitating capital formation on one side, and investor protection on the other, but what is in the middle, that third prong of our mission, is about fair, orderly, efficient markets.

I think that we can drive more efficiencies in these markets in the middle, and to the extent we can, and are able to, that helps capital formation, and it helps investors.

I have asked staff to look at projects in a number of areas in the Treasury markets, which have had some hiccups in resiliency over the years, and in non-Treasury fixed-income markets, where possibly we could drive more efficiency, equity markets, and securities-based swaps and so forth.

In these critical markets, I think companies and investors alike will benefit if we get greater competition, lower cost, and bring transactions out of the dark.

The second is the rapid changes in technology. We are living in transformational times, perhaps as transformational as the internet itself. I know you might be thinking I am going to say something about crypto—and I will—but I think the transformational side is actually in data analytics.

Predictive data analytics, artificial intelligence, and machine learning are really shaping a lot of parts of our economy. And with these developments, how can we increase access and choice, which is net positive, but also ensure that we make sure we are still achieving our public policy goals of investor protection and promoting capital formation and the like and ensuring that we protect against conflicts of interest or biases in the data or systemic risk.

Separately, as the ranking member said, and we have had some good private conversations on this as well, I don't think that we have enough investor protection yet in the crypto finance, issuance,

trading, or lending areas. I have asked the SEC staff, working with fellow regulators at our other Agencies, to see what we can do here.

The third issue is disclosures. Since the 1930s, we have had a basic bargain: Investors get to choose what risk they take as long as it is based upon full and fair disclosure of the issuers.

Over the decades, we have updated what those disclosures are, and I look forward to talking about this further with Representative Huizenga. But today, investors are looking for consistent, comparable, and decision-useful disclosures around climate risk, human capital, and cybersecurity.

I have asked staff to serve up ideas that we would, if the Commission supports those ideas, put out for public comment and see what investors think, because it is all about investors at the core of this.

I have also asked staff to develop proposals around potential issues—as you know, Sarbanes-Oxley passed about 20 years ago, and there was a basic bargain there as well. To issue to the public in the U.S., your auditor has to open up to inspections by the Public Company Accounting Oversight Board (PCAOB). And although 50 jurisdictions have allowed this, currently China and Hong Kong do not.

The SEC, working with the Public Company Accounting Oversight Board, has quickly put in place things to meet the challenges that Congress asked us to work on to ensure that this would happen.

Separately, I want to say that last month, we authorized voluntary return to the office. We have worked remotely for about 19 months now. But it speaks to the dedicated staff of the SEC, and I can't compliment them enough.

The last thing I would say is, as Chairwoman Waters said, we have shrunk about 4 or 5 percent in the last 4 or 5 years. I would have hoped that we might have grown 4 or 5 percent in this period of time. I know resources are tight, but it would help us to do our mission.

I thank you, and I look forward to your questions.

[The prepared statement of Chairman Gensler can be found on page 76 of the appendix.]

Chairwoman WATERS. Thank you very much.

I now recognize myself for 5 minutes for questions.

Chair Gensler, as I mentioned in my opening statement, I am deeply concerned about the recklessness of Senate Republicans refusing to vote for any legislation that would allow the Treasury to pay the debt those same Republicans already voted to incur.

Last week, Treasury Secretary Janet Yellen said on several occasions that failing to raise the debt ceiling would lead to, "a catastrophe," and Fed Chair Powell said it was essential for Congress to act quickly.

Chair Gensler, as a former Treasury Under Secretary and Assistant Secretary focusing on financial markets, as well as a former Chair of the Commodity Futures Trading Commission (CFTC), and as the Chair of the SEC, you are uniquely positioned to describe what will likely happen if Treasury is blocked by Republicans from paying its bills.

Can you describe what you expect would happen in our markets, both in the coming days and if Treasury does default?

In particular, I would like to know what would likely happen to people's retirement investments and to America's businesses trying to raise capital and create jobs.

Mr. GENSLER. Madam Chairwoman, I think we would be in very uncharted waters. The uncertainties abound around this.

At the base of our entire capital markets are Treasuries. It is one of the reasons why we are working so hard to build the resiliency there. But in an actual default, we would be in a period of uncertainty. What would happen to money market funds? What would happen to the banks that rely on that marketplace? The mortgage market is priced off of the marketplace, and the automobile loans that people take out on a daily basis.

And those uncertainties would be very significant. I think that, although we don't know for sure, we would have significant volatility in the markets, and we would see some breakages in the system. But I couldn't predict which firms and the like.

We do know that there is such a base of Treasuries that underpins our entire capital markets that if that were to go into default, we would be in for some of the greatest challenges we have seen in our financial sector, much greater, probably, than what we have seen in the past.

Chairwoman WATERS. Thank you.

As I mentioned, one-fourth of the increase in the debt is directly attributable to the former President's tax scamz, when he passed the tax cuts for the ultra wealthy and Wall Street firms without offsetting it at all.

Simultaneously, the Trump Administration reduced the staffing of the SEC by 5 percent, and did not provide funding to cover the SEC's rising operating costs. This occurred as our capital markets grew significantly, including the huge growth of the crypto assets.

Chair Gensler, as you know, the Obama Administration sought to double the budget of the SEC and the CFTC, but those plans were thwarted by Trump.

Please describe how your current budget request, if passed by Congress, would help the Agency to fulfill its indispensable mission of protecting those whose savings and work fuel our economy?

Mr. GENSLER. I thank you for that.

At the core of what we are in this three-part mission—helping companies, investors, and the markets themselves—we are effectively a cop on the beat.

And we, right now this year, I think, have a boom in initial public offerings. And the more resources we have, the more ability we have to help the public and help those companies that want to go public, ensuring that their filings provide the disclosures to the public.

We help the public in multiple ways. And the markets, as you mentioned, are larger now than 5 years ago. And this is not just about the crypto markets; this is about the base of capital formation for innovators, for the entrepreneurial spirit of the country.

I really believe in the basic bargain in the last 90 years that with our laws and the SEC, we help enhance economic activity with a robust SEC.

Chairwoman WATERS. Thank you very much.

I have always been concerned about what appears to be the Republicans' actions to not adequately fund the SEC. And I know that you are the cop on the beat, and we need you to be funded in order to do your job. We are working as hard as we can to give you that kind of support. And I thank you again.

It is now time for me to bring on the gentleman from North Carolina, Mr. McHenry, who is the ranking member of the committee.

You are now recognized for 5 minutes, Mr. McHenry.

Mr. MCHENRY. Thank you, Madam Chairwoman.

Chair Gensler, I am concerned that you are operating on the edges of existing law. You stated in 2018, before this committee that, "Clear rules of the road will allow firms, both incumbents and startups, to more fully explore investing in blockchain technology or crypto assets."

You also indicated in an interview following the GameStop hearing that the SEC will be working with Congress to bring a regime to crypto exchanges.

What has changed?

Mr. GENSLER. Thank you, Representative McHenry.

I think that working with Congress would be a help. And as we have talked about a number of times, I think that the SEC's authorities in this space are clear.

But what we could work with Congress on is, along with our sister agency or sibling agency, the Commodity Futures Trading Commission, we both have market oversight. They have oversight over derivatives. We have it over securities. They also have enforcement authority over commodities.

And I think that coordination, and working not just with this committee but with multiple committees of Congress, we could address it.

I also think—

Mr. MCHENRY. In your view, there is a limitation, though, around what the CFTC, your former job a few years ago, and the SEC, what permit they have under law to regulate these regimes. Is that what you are indicating?

Mr. GENSLER. What I am indicating is I think that Congress painted with a broad brush for the definition of security and included 30 or 35 separate areas that are within the definition of security to protect the public against fraud.

But they also wrote in other laws for the Commodity Futures Trading Commission to have authorities. And I think that coordination, in working with Congress, we can fill some gaps.

Mr. MCHENRY. Okay.

Mr. GENSLER. We could also fill gaps around stablecoins and the banking regulatory regime.

Mr. MCHENRY. Okay, filling those gaps. Along those lines, I think it is important that we have some regime in place under existing law, and I think we have to have clarity in the law around what is a digital asset.

And I do think, as you noted back in 2018—you noted in your testimony at the time that the SEC did not view Bitcoin and Ether as securities. Is that still your view?

Mr. GENSLER. I think you are referring to when I was at MIT, testimony I gave in front of this committee in 2019, if I remember, and I was speaking to what the SEC career staff had said.

Mr. MCHENRY. But I am asking your view now. I understand all that context. I have done the research, and in fact, I was at that hearing. But is it your view now that Bitcoin and Ether are not securities?

Mr. GENSLER. No. I am not going to get into any one token. But I think the securities laws are quite clear. If you are raising money from somebody else, and the investing public believes, or has a reasonable anticipation of profits based on the efforts of others, that fits within the securities law.

Mr. MCHENRY. Okay. That is why today, along those same lines, Chairman Gensler, I introduced the Clarity for Digital Tokens Act with Representatives Davidson and Budd, based on Commissioner Peirce's digital token safe harbor proposal.

I asked about this before. Have you had a chance to review her proposal?

Mr. GENSLER. Commissioner Peirce and I talk actively about these matters, but I have not yet reviewed—I think you just introduced your bill this morning, and I look forward to looking closely at that.

Mr. MCHENRY. Yes, but the bill is based off of her proposal. I was asking if you have reviewed her proposal.

Mr. GENSLER. Commissioner Peirce and I have had a number of conversations about her thoughts on that.

Mr. MCHENRY. Okay. So, you are not willing to answer that question.

Mr. GENSLER. But, no, she and I have talked about her thoughts on this around a potential safe harbor.

Mr. MCHENRY. Okay. But again—

Mr. GENSLER. I think that the challenge for the American public is that if we don't oversee this and bring in investor protection, people are going to get hurt.

Mr. MCHENRY. I understand. This is a horrible format for cross-talk here. But what I am trying to get at here is a broader-brush view. You have done a number of media interviews. And, so far, we have seen some of those comments that you have made have raised questions in the marketplace made things less than clear.

And I would point to a couple of things. You have made seemingly off-the-cuff remarks that moved markets, you disregarded rulemaking by putting a statement out without due process, and you have essentially run roughshod over American investors, and that is before we even talk about summarily firing the PCAOB members without cause.

My question is the general broad brush here. Is it your intention to follow the Securities and Exchange Commission's long-held practice of notice and comment on rulemaking and procedures?

Mr. GENSLER. I believe in the Administrative Procedure Act.

Chairwoman WATERS. The gentleman's time has expired.

Mr. GENSLER. I think we have benefited by getting the public's input.

Mr. MCHENRY. Is it your intention to follow through with that?
Chairwoman WATERS. The gentleman's time has expired.

Mr. MCHENRY. Is it your intention to follow the Administrative Procedure Act?

Mr. GENSLER. We follow it, and we put out a proposal last week on fund disclosure, and we look forward to doing that on many of the things on our unified agenda.

Chairwoman WATERS. Thank you, Mr. Gensler.

The gentleman's time has since expired.

The gentlewoman from New York, Ms. Velazquez, who is also the Chair of the House Committee on Small Business, is now recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Chairwoman Waters.

Chair Gensler, volatility surrounding the trading of GameStop and other stocks earlier this year has renewed calls for increased transparency and regulation of short selling.

Section 929A of the Dodd-Frank Act requires the SEC to develop a rule to increase public reporting of short selling activity, but more than 10 years later, the SEC has yet to promulgate a rule.

Where does this rulemaking stand on your list of priorities as Chairman? And when do you think the SEC will propose this rule?

Mr. GENSLER. I thank you for highlighting that, Representative, and I have asked staff to propose it to our five-member Commission. And yes, as we were just discussing, if we vote on it, we put it out for notice and comment.

Around short-selling disclosure, this was a mandate Congress laid out, I believe, in the seven or eight places that we have unfulfilled mandates, whether it is on executive compensation, short selling, stock loans, and some mandates on securities-based swaps.

All of those are on our unified agenda. I would hope and anticipate that, although we have an active agenda, we will put this out for notice and comment sometime early next year, and then hear what the public has to say on it.

Ms. VELAZQUEZ. Great. As you know, increasing the transparency of short-selling activities is a very important issue for me, as I have consistently seen this practice used against retail investors and working families. We have waited too long for this rulemaking, and I would really appreciate if you could keep my staff updated as the SEC moves forward.

My office has also heard strong and consistent demand from a wide group of market participants about the need for mandatory climate risk disclosure rulemaking at the SEC. Has the SEC heard a similar type of demand?

Mr. GENSLER. We have. There are hundreds of companies. A majority of the 500 biggest companies currently do voluntary disclosures in this space, and trillions of dollars of assets under management have asked for disclosure.

I think this is a place where there is a real role to help bring consistency and comparability, some standardization that would help both the companies and the investors.

And, again, we will put it out for notice and comment and see what the public says on, what do investors really want when they are making these decisions on climate risk, as you say, but also on human capital, and we have a project on cyber risk as well.

Ms. VELAZQUEZ. You have previously stated that the SEC will propose a rule on climate risk disclosure by the end of the year. Do you still feel that this is an appropriate timeframe?

Mr. GENSLER. Yes. Whether it is towards the end of the year or early next year, because these things—we want to finish up our economic analysis, and take comments from each and every one of our Commissioners. And, again, I don't want to prejudge voting something out.

Deep respect, and I think that the Commission process is good, but in the next handful of months.

Ms. VELAZQUEZ. Great, so we don't have to wait 10 more years, like the other rule.

Chair Gensler, this committee passed my bill, the Greater Accountability in Pay Act, which builds on Dodd-Frank's CEO pay ratio disclosure requirement by requiring public companies to disclose the ratio between the pay rate percentage of its executives and its median employees over the previous year.

Can you explain how this bill will help increase the accuracy of equity prices, allow investors to make more informed decisions, and allow the SEC to provide better oversight of our capital markets?

Mr. GENSLER. Congresswoman, if I could go a little broader, I think that investors benefit by understanding and having transparency about executive compensation, and there are a number of features included in your bill to do that.

We still have three important rules that Congress asked us to do and to finish up on, and so we are moving forward on each of those.

The first is called, "clawbacks," a simple concept that if executives got paid on financials that had to get revised, then some of their pay would go back.

Second, there is something called, "pay for performance," and we are going to try to—staff is working on that to propose that out.

And third, last week we even had more disclosure with regard to, "say on pay," that funds would disclose their votes.

But I think, all in all, it helps the efficiency of markets when investors get to decide when they have that full and fair disclosure on executive compensation.

Chairwoman WATERS. Thank you very much. The gentlewoman's time has expired.

Ms. VELAZQUEZ. Thank you.

Chairwoman WATERS. The gentlewoman yields back.

Mrs. Wagner is now recognized for 5 minutes.

Mrs. WAGNER. Thank you, Madam Chairwoman.

Chair Gensler, welcome back.

In much of your commentary on payment for order flow, you suggested that investors may not be receiving best execution.

Can you provide us with more specificity on why it is you believe the duty of best execution may have been violated by retail brokers?

Mr. GENSLER. Thank you for asking that.

There is the potential for the conflict of interest when my order or anybody's order is not routed in competition with other orders but is routed to a wholesaler or broker who is purchasing that order flow.

So, when we back away from order-by-order competition, and it may well be about algorithms or formulas between a broker and a wholesaler without transparency, there may not be best execution.

Mrs. WAGNER. One leading brokerage firm found that last year, they had billions of dollars of price improvement by executing through wholesalers, with 90 percent of trades finding price improvement.

This particular broker received payment for order flow, but ultimately, the retail trader received a better price than they could have received, say, via an exchange.

Isn't that a good thing, Chair Gensler?

Mr. GENSLER. Price improvement is a good thing, but I think the measuring rod of that price improvement is off of something called the National Best Bid and Offer (NBBO), that does not reflect the full market. Sixteen years ago, when these rules were put in place, they may have been fit for 2005, but so much has changed in those 16 years. I have really asked staff to say, what can we do to update this for the 2020s?

And that National Best Bid and Offer has constraints in it. A lot is not in it. It also has an increment that it can't be narrower than penny size. There are a lot of reasons why this may not be the most efficient method.

Mrs. WAGNER. Chair Gensler, you received significant attention recently when you were quoted as saying that a ban of payment for order flow is, "on the table."

Can you explain what banning payment for order flow would achieve? And if payment for order flow were banned, do you anticipate that retail trading would remain commission-free?

Mr. GENSLER. We are motivated by our three-part mission, and the core in the middle is efficient, competitive markets. So, I have asked staff, how can we help ensure, and even enhance that efficiency?

Right now, as you mentioned zero commission, zero commission does not mean it is free. It does have some cost inside. Some brokers have payment for order flow, but I would note that some do not and also offer zero-commission trading.

Mrs. WAGNER. I would have to say pennies. I would certainly hope that a ban of payment for order flow is not, "on the table."

Chair Gensler, turning to Regulation Best Interest (Reg BI), the SEC adopted Reg BI on June 5, 2019. It was the culmination of a comprehensive, years-long effort to enhance the standards of conduct for financial professionals that advise retail investors.

The benefits of Reg BI to the capital markets are abundantly clear, and there is little doubt that investors are better off today than they were previously.

Chair Gensler, you have brought on staff with a clear public record of opposing Reg BI. You can understand how that would give the investing public the impression that the SEC, under your leadership, is not committed to Reg BI.

And I would like to point out that during your confirmation process, you committed to working with Commission staff to ensure that Reg BI, "lives up to its best-interests label."

Do you still commit, sir, to fully supporting the continued implementation of Reg BI?

Mr. GENSLER. I think that is as true today as when I said it, that to ensure that our regulations, Regulation Best Interest and others, live up to what is written down on the page and really is Regulation Best Interest, is that investors are getting the best interest when a broker is making recommendations.

Mrs. WAGNER. Great. I am very relieved to hear that.

I have run out of time, so I will yield back. I have some other questions, but I will submit them for the record.

Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you very much.

The gentleman from California, Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mr. SHERMAN. Before I begin my 5 minutes, I have a unanimous consent request. I request unanimous consent to enter into the record letters from the Los Angeles County Employees Retirement Association, the Healthy Markets Association, Railpen, and the Certified Financial Planners Board of Standards, which express support for certain discussion drafts that are in front of us today, including those to improve the Office of the Investor Advocate.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. SHERMAN. I will now begin my 5 minutes by focusing on the PCAOB.

Chairman Gensler, thank you for mentioning that in your opening statement. And thank you for your work in implementing the Holding Foreign Companies Accountable Act, legislation that Senator Kennedy and I led in Congress last year.

During your testimony to the Senate Banking Committee, you expressed support for a revision to this law, which would shrink the amount of time from 3 years to 2 years for U.S.-listed foreign companies, basically Chinese companies, to provide the PCAOB with the access it needs to ensure that the company's audit was done accurately.

As you know, the primary purpose of the bill is to give the PCAOB and the SEC the leverage needed to reach agreements with market regulators in China. Do you believe that this 2-year timeframe is consistent with the objective of ensuring that companies listed on U.S. exchanges have accurate audits?

Mr. GENSLER. It has been, I guess, 18 years now since this basic bargain was put in place, and 50-plus jurisdictions have allowed the Public Company Accounting Oversight Board access to the work papers.

And access means unfettered access, that they can pick which work papers to see. They see it. They are not redacted. They can talk to the audit staff, and talk to them openly, and assess whether the audit is up to the standards. And there has been a challenge, that has not been the case with China, or more recently, with Hong Kong.

I think that if Congress decided to shorten it from 3 years to 2 years, I am supportive of that. That is up to Congress.

We are going to continue to work with the PCAOB to make sure that everything is in place. Year one is 2021. If there is any ambiguity about that, year 2, right now, would be 2022, and so forth.

Mr. SHERMAN. Thank you. And having been an auditor myself, I have prepared a lot of work papers, so I understand why you need that or the PCAOB needs that unfettered access.

I have a couple of comments about points that have been raised. The ranking member argues that crypto is somehow not an investment or not subject to SEC oversight. I would say cryptocurrency is not at this stage a currency. The vast majority of people who are buying it are not buying it in order to go out and buy a ham sandwich with it. They are buying it because they think it will go up, and they can sell it for more dollars than they invested in it. It is an investment like many other investments, and investors need protection and deserve protection.

As to commission-free trades, free is very expensive, if free is illusory, and being told that their trades are free can lead to high-frequency trading.

The investor deserves more than, "best execution," because, "best execution" is a misnomer. They deserve not only price improvement, but the most price improvement. And a system which tells them it is free but doesn't give them the most possible price improvement is certainly illusory.

We looked at Archegos, as many people focused on that as a family office issue. I focused on it as a margin issue. Every investor in the country is told, okay, you have so much in your brokerage account, you can borrow up to half of what is in that account. That is your margin limit. And that has been the law since people were jumping out of the windows in the 1930s when they saw their stocks go precipitously down.

But we found with Archegos that they figured out a way to use total return swaps to give themselves 8 times rather than put up only one-eighth or even one-tenth of the money.

Should we either allow ordinary investors to borrow 10 times the value of their portfolios, or should we prevent big guys like Archegos from doing it, or should we have one rule for small investors and another rule for those sophisticated enough to engage in total return swaps?

Mr. GENSLER. I think that the events of March in the family office you mentioned raised a number of questions.

I think that we should have, in terms of your central question about margins, some more consistency. We do have, with Congress' authority, rules that are going into effect in November.

The Commission, prior to my getting there, voted out that securities-based swap dealers had to register as of November 1st. They have to report their trades as of November 8th. Some of that will be reported publicly next February.

I have also asked staff to do more work, and recommend to us, can we put out for public comment a rule around the aggregate positions, a family office that you mentioned, Archegos, their aggregate positions of total return swaps?

Chairwoman WATERS. Thank you. The gentleman's time has expired.

The gentleman from Oklahoma, Mr. Lucas, is now recognized for 5 minutes.

Mr. LUCAS. Thank you, Madam Chairwoman, for holding this hearing.

Chairman Gensler, as always, it is good to be with you again. Perhaps only a few of our colleagues remember the amount of time when you were the CFTC Chairman, and I was the House Agriculture Committee Chair, that we spent in quality hearings.

Of course, you will always note that I focus on things that are important at home, and today I would like to put my particular perspective on the upcoming climate risk disclosure rulemaking that has generated a lot of interest here in Oklahoma, since we are both producers of traditional and renewable energy, and an agricultural area that consumes a great deal of energy.

Mr. Chairman, publicly traded companies are at varying stages of climate and ESG disclosure, and the related reporting and climate modeling is still an evolving practice.

Are you concerned that the upcoming climate risk framework could have an outsized burden on small to medium-sized companies? And how might the SEC account for this?

Mr. GENSLER. I am really looking forward, with the support of my fellow Commissioners, to try to put something out for public comment, and a question that you just raised, to include questions like that to the public as to large issuers versus small issuers, as you mentioned.

And also, I think implicit in what you are saying is some reporting will be easier to do sooner.

I have asked staff to take a look at qualitative disclosure about governance and strategy, but also quantitative disclosure to make sure that the disclosures people are making, particularly around greenhouse gas emissions, have consistency, but also, how to potentially even phase in the implementation amongst large and small issuers and also amongst the different types of disclosures.

Mr. LUCAS. Because many would argue, I think quite correctly, that the small and medium-sized companies are the real generators of opportunity, are the real generators of growth. We don't want to harm their ability to compete with their big brothers and sisters, so to speak.

That said, continuing to think about this issue, you said your staff was considering quantitative factors, such as metrics related to greenhouse gadgets emissions, climate change, financial impacts, and advancements towards climate-related goals.

You have also mentioned many times today about the importance of staff, and we all know that they are critical to whichever branch of the Federal Government you are in.

Could you describe the current depth of climate expertise at the SEC? Are there currently climate environmental scientists on staff? And is the Commission engaged with agencies, such as NOAA, the EPA, and the Department of Energy, regarding the climate risk rulemaking process?

Mr. GENSLER. The expertise of the SEC is around disclosure about ensuring that the public—looking at the disclosures that are currently. And, again, hundreds of companies are making voluntary disclosures now, trying to bring some consistency and comparability to those disclosures.

To your second question, yes, we have been in conversations with other important parts of the U.S. Government.

Mr. LUCAS. It is absolutely important. And as much faith as I have in the MBAs and the attorneys and the political science people, it is important that these other scientific disciplines be involved in this process, whether it is consulting with the other entities in the Federal Government that have that expertise or drawing on it from somewhere else.

This is too important just to create rules and regulations. It has to be done, I think, Mr. Chairman, you and I both would agree, in a very thoughtful fashion.

With that, Chairman Gensler, you have announced that the SEC is considering a review of Treasury market structure. Could you discuss what this review might entail, how you are coordinating it with the Fed and the Treasury Department, and how you might think about the costs and benefits of potential changes?

Mr. GENSLER. We have had a number of challenges in our U.S. Treasury markets dating back to 2014, when there were problems in the pricing in the market, but then in 2019 and 2020, where literally our central bank, the Federal Reserve, was providing liquidity to the market because there were challenges in the financial resiliency.

Working closely with our colleagues at the Federal Reserve and Treasury, and also the Commodity Futures Trading Commission has a role here, what we are trying to think through is, how we could build greater resiliency into the market?

With a \$22-, to \$23 trillion market, it is at the base of everything else we do in the capital markets. And right now, if I can use the term, we have kind of a multinodal system where we have a clearinghouse, we deal with brokers, we have big market makers, both principal trading firms and big banks. And if any one of those got into challenges, as we saw last spring and in the fall of 2019, our central bank tends to get pulled into providing resiliency.

So, we are looking at, can we do this better around potentially central clearing? Former SEC Chair Jay Clayton took up, could we put some rules in place about the trading platforms themselves and the like?

Chairwoman WATERS. The gentleman from New York, Mr. Meeks, who is also the Chair of the House Committee on Foreign Affairs, is now recognized for 5 minutes.

Mr. MEEKS. Thank you, Madam Chairwoman.

Chair Gensler, I first want to start out by saying that I am extremely pleased to see that you are serving as the Chair of our SEC. I appreciate that you and I have had an open dialogue on issues that touch on both the House Financial Services Committee, as well as the House Foreign Affairs Committee, in my capacity as Chair there, including the costs and the benefits of the widescale Chinese delisting of American markets.

But I also want to commend you on moving the needle to increase more diversity and transparency in corporate boardrooms, and also overall promoting better diversity in human capital practices in the industry as a whole.

The SEC's recent vote to approve new listing rules to enhance corporate board diversity disclosures is a necessary first step, not only because diversity of thought is a proven positive factor for

companies who succeed, but also because investors are demanding that their boards be diverse.

As you know, my bill, the Improving Corporate Governance Through Diversity Act, passed through the House recently, and I am grateful that you are continuing these efforts.

The newly-approved rules, however, are just the beginning, since that is specific to NASDAQ, and there are companies listed on other exchanges that will not need to comply with these rules.

My question to you, Mr. Chairman, is, can you please elaborate on what other types of actions the SEC is preparing to take with respect to promoting diversity specifically?

Mr. GENSLER. Thank you, and it is good to see you. I think we first worked together when I was a staffer to Paul Sarbanes some 20 years ago.

I have asked staff to serve up to us two important potential rulemakings in this area, one related to the workforces of America in public companies. Human capital is probably one of the most critical assets of a company, and building upon what the Commission did last year to give more specific disclosures about the workforce, part-time versus full-time labor rates, and the like, but also about the diversity of the workforce.

U.S. companies now disclose through the Department of Labor through EEO-1 filings and the like around their diversity, and I have asked the question, would it be helpful to investors to understand that?

In addition, you raised the question about board diversity, and I have asked staff for recommendations around the boards. There are only 10 or 15 people usually on these boards, or 6 to 15, but it is the leadership. And what it is really about is what investors want to know, and whether we should do a rule to be considered by our Commission on board diversity as well.

Mr. MEEKS. Thank you for that. I look forward to you continuing to work on that.

You have also expressed serious concerns over the loopholes and potential abuses that exist within the 10b5-1 plan framework, which serves as an affirmative defense for insiders so that they make trades according to specific plans without it constituting insider trading.

But the existing framework allows for a lot of different types of opportunistic trading, where they could have had material non-public information. But because they had set up a 10b5-1 plan, it is not considered insider trading.

And we have seen that executives of large companies canceled their plans or implemented plans and have the trade executed a few days later, and they end up netting significant amounts of money.

But the question we should ask is, why did they cancel their plans or why did they implement a plan that allows them to trade shortly after the plan was put in place? If it is because they have some inside information, then we need to address that loophole in the framework. Is there an obvious need for the 10b5-1 framework to change?

Chair Gensler, can you please describe the types of loopholes that exist in the 10b5-1 plan framework and what Congress can do to assist the SEC in addressing these loopholes?

Mr. GENSLER. I do think that there are gaps in this, in 20 years of this so-called safe harbor affirmative defense for insiders to sell their securities. Right now, they can have multiple plans. They can, as you said, cancel them on a daily basis, put up a new one, and the like.

One of the best practices that is out there, and there are many best practices out there, is to have a cooling-off period, and I think my predecessor wrote to Congress about this as well.

I have asked staff for recommendations around whether we should have a required cooling-off period, if you want to say you have this affirmative defense, whether you can have just one plan rather than multiple plans and the like.

So, I think there is work to be done here.

Chairwoman WATERS. Thank you very much. The gentleman's time has expired.

The gentleman from Florida, Mr. Posey, is now recognized for 5 minutes.

Mr. POSEY. Thank you, Chairwoman Waters. One of the charter purposes of the SEC is to facilitate capital formation. Last week, a member of the committee asked Secretary Yellen how the Administration's proposals to increase capital gains taxes, qualified dividends, and corporate tax rates would affect the competitiveness of American companies. Given your responsibility for capital formation and the research of the SEC, my question is, how would those new taxes impact the competitiveness of the United States to attract capital investment in the world economy?

Mr. GENSLER. Congressman Posey, I think that our remit is about the capital markets, and if it is okay, I think I should leave it to Congress and the other parts of the Executive Branch to sort through taxes.

But, in terms of our markets, it is about transparency. It is about disclosure. It is about protecting against fraud. And it is facilitating these vibrant capital markets regardless. Over the decades, Congress has decided on high capital gains and low capital gains, but we sort of leave that to others and then try to facilitate, through our rules, the most vibrant capital markets for capital formations.

Mr. POSEY. That is a good walk around the block, but one of your charter purposes is to facilitate capital formation, and I am just trying to find out if more taxes on corporate America and working Americans is the right direction to go, from your perspective?

Mr. GENSLER. Again, I do appreciate the question, and if I weren't in my current role, I might have a lively discussion as a professor at MIT, but in the role that I have right now, it is really to facilitate capital formation through the tools that Congress has given the SEC, the tools of antifraud, antimanipulation, and a focus on registering exchanges so that there is really efficiency in the middle of the market. Those are the important tools, whether Congress raises the tax rate or lowers the tax rate.

Mr. POSEY. Okay. And just an assumption, I am sure nobody else in the world is thinking this right now, but the refusal to say yes or no kind of indicates that the answer is probably one you don't

want to give, and that, in fact, the higher taxes are going to actually hurt your ability to—

Mr. GENSLER. I respect that. I just think there are things that you want me to discuss—crypto, China disclosures, the PCAOB, the structure of equity markets, and the structure of Treasury markets—but I think you would want me to leave tax policy to Congress and the Executive Branch.

Mr. POSEY. Setting the policy is definitely the job of Congress and the Executive Branch. I just think the average person in the street would think that the Chairman of the SEC would have an opinion about whether we should tax American companies and American people and American families more, if that helps you do your job or if it doesn't help you do your job?

Mr. GENSLER. What best helps do the job is discussions like this, of course, and trying to get the right resources to the SEC and then working with my fellow Commissioners to try to enhance our capital markets, given the rapidly-changing technology. I think tax rates, again, are the remit of Congress and the Executive Branch.

Mr. POSEY. I am not trying to beat you up, and I don't want to beat a dead horse. We will just leave this subject for now.

Given the time you have been at the SEC, have you identified any regulations or restrictions on capital markets that you think could actually be relaxed? If so, what restrictions could be relaxed?

Mr. GENSLER. I think in each of these reviews, and particularly as we review the Treasury market structure and the equity market structure, what I have asked is, how can we, in the 2020s, ensure that they are most resilient and efficient, and I think that is really a critical thing that we can do, and the efficiency in the capital markets might, as you said, be turning a dial or changing some of our current rules.

I would also say, in the crypto space, when I have said publicly that these platforms come in, talk to us, get registered, these trading and lending platforms, it is highly unlikely, with 50, 100, or sometimes thousands of tokens, that they don't have securities, but if they come in and they say, "You know, that transfer agent rule doesn't quite fit or this custody rule doesn't quite fit for these new forms of capital formation," we should get into those discussions and talk about how we stay true to the mission that Congress wants us to do, but if we need to adjust some of these sometimes very technical rules that were written in a different environment, we should see what we can adjust.

Chairwoman WATERS. Thank you very much. The gentleman's time has expired.

The gentleman from Georgia, Mr. Scott, who is also the Chair of the House Agriculture Committee, is now recognized for 5 minutes.

Mr. SCOTT. Thank you.

Chairman Gensler, how are you? The first thing I want to say, Chairman Gensler, is congratulations. As both you and I are graduates of the Wharton School of Finance at the University of Pennsylvania, in Philadelphia, where we received our Master of Business Administration (MBA) degrees, we all are very proud of you. And, plus, I think, you are the only one now who has been both Chairman of the CFTC and Chairman of the SEC. What an accomplishment.

I am so excited that one of the first things that you have done at the SEC is to establish climate change as one of your top priorities. And as Chairman of the House Agriculture Committee, I make climate change a very important part. We just had credit carbon hearings to get us started in that, but my question is that you have released a newly-proposed Environmental, Social, and Governance (ESG) regulation. Tell us, how exposed are our financial and security systems to these weather patterns and monetarily, investment, equipment, the floods up North in New York, and the fires burning up half of the West? This is serious. What is the economic and financial impact in your arena in terms of securities?

Mr. GENSLER. Thank you for asking that. I would note that I am the second person to have this honor, and the first was Mary Schapiro, who chaired both of these great Commissions. And the reason I mention is that she has also, subsequent to being at the SEC, done a lot of work on climate risk disclosure. So, we are trying to build upon the work of something that investors have come to look to, the Task Force on Climate-Related Financial Disclosures (TCFD), where Mary is now working.

I also want to say that it is really up to investors. Investors are looking for this disclosure because climate risk can affect a company, and it can affect their physical risk if a flood comes, hurricanes come, or other physical indicia of climate risks hit a company. And then, there is also transition risk. The companies may be adjusting their business models for their own self-declared goals.

Many companies have said publicly that they are going to have lower emissions or net-zero emissions at some future date, but also jurisdictions have—what they might be doing, what their jurisdictions might be doing, what their customers and competitors might be doing could affect their transition paths in the future. Investors want to know more.

Mr. SCOTT. Mr. Chairman, I want to get to this other question, because it is so important, too, and much has been made about GameStop and Reddit and Robinhood and all of that. What are you doing to protect investors, and to protect our security systems? And what can and must Congress do to stop this, put punitive measures, making it a felony?

We have to get tough so that we can protect—our financial system is the heart and soul, and within that, it is our investment, our stock markets, that must be held away from this mess. So, what can we do, what can Congress do to put some strong punitive measures in to stop this fraudulent behavior with our social media?

Mr. GENSLER. The GameStop events raise numerous issues, some of which are in the plumbing and the infrastructure of clearinghouses, but you are at another level about whether there were things that Congress could do to address the challenges there. What we are doing at the SEC is three or four different projects: first, the plumbing, which I talked about, the clearing, trying to shorten the clearing cycles; second, we put out for comment for the public to weigh in on use of digital engagement practices; and—

Mr. SCOTT. I know my time is getting short here, but I do want to say this, Chairman Gensler. I have asked my staff to begin putting together a bill so that we can have strong enforcement powers, put fines in, put jail sentences in, make it tough, so we will not

allow these social media platforms to abuse the basic foundation of our great nation. Invest in our stock exchange. You and I both studied that. We have to protect our financial system. I would like to call upon you at some point—

Chairwoman WATERS. Thank you very much.

Mr. SCOTT. —to get further ideas.

Thank you, Madam Chairwoman.

Chairwoman WATERS. The gentleman's time has expired.

The gentleman from Missouri, Mr. Luetkemeyer, is now recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

And thank you, Chairman Gensler, for showing up today. I appreciate that. I wish Secretary Yellen would adhere to her constitutional and legal authority to actually show up at the Small Business Committee. It would be nice if she would do that. Maybe you could talk to her about that.

My question starts out with, there was an article in The Wall Street Journal yesterday outlining how private companies are urging the Financial Accounting Standards Board (FASB) to create accounting standards related to cryptocurrency and ESG. I know you are examining some of the rulemakings with regards to subjects, and specifically through Current Expected Credit Losses (CECL), standards are being set by FASB in which they ignore industry participants, as well as the financial well-being of the American consumer.

I am currently working on legislation to enhance the transparency of the FASB standards-setting process, and so my question is, do you think FASB is the appropriate entity to determine how assets related to crypto and ESG are treated and not regulators, who must follow the Administrative Procedure Act and significant notice and comment?

Mr. GENSLER. There are three parts to your question.

With regard to climate risk, with regard to other matters on crypto, I think that we are going to put things out for notice and comment. Disclosure mandates over the decades have really been the remit of the Securities and Exchange Commission where appropriate, and we enhance them based upon the process of notice and comment, as you discussed. On crypto, as well, I think that is not just the SEC, but also the CFTC and the bank regulators. I think we have a lot of work to do and maybe even as earlier discussions with other Members, Representative McHenry, and with Congress as well.

I am not familiar with what FASB is doing specifically with regard to crypto or climate risk, but if it relates to the financial statements, the footnotes to the financial statements, it may well be that they have a project on how, for instance, crypto assets are reflected on the financials. I would be glad to work with you and your staff to better understand that.

Mr. LUETKEMEYER. I appreciate that. While The Wall Street Journal canned the article yesterday, it is something you and your staff could review, and see if it is appropriate for you to get involved. Along that line, you and I talked offline a while ago with regards to the ESG situation. I have some broker friends who are talking to me and telling me: Look, now there is a bunch of compa-

nies that want to be able to be—for people to invest in if they are going to be the green companies, and so they fill out forms or they add onto their website nothing more than they are now green or they support green activities or they are doing this or that.

Are you going to set some standards so that these companies that say that they are green companies, that people are investing in because of that, are actually doing something along that line? Because I think, to me, this is misleading the investors. Retirement funds and certain investors want to invest in green companies. And if they are just putting this on their website saying, “Hey, I am a green company,” without doing the things to qualify for that, I think they are misleading the public. What is your concern about that?

Mr. GENSLER. We have a project also about investment funds, investment managers, if they name themselves something, whether it is green, sustainable, climate-free, et cetera, what stands behind that? I think that the markets would benefit, and it sounds like we might agree that this would benefit if there is rigor behind that, the same way as if you named yourself to say, “I am a high yield bond fund,” that you are actually buying high yield bonds underneath it, and I think that would help.

When I walk into a grocery store and something says, “fat-free” on it, I can look at a label and there is something behind that, that is actually meaningful. On the company side, we are looking at disclosures as well, and I would love to work with you to understand if you think, on the company side, there is something we could do as well.

Mr. LUETKEMEYER. Thank you for that. The last time you were in front of the committee, we discussed the SEC issuing a rule-making on guidance similar to the prudential regulators. You said that you would review what the prudential regulators have done and get back to me. Have you reviewed what the prudential regulators have done with regard to guidance?

Mr. GENSLER. I’m sorry. Guidance, I just want to make sure on which of the topics. Are you still speaking about climate—

Mr. LUETKEMEYER. Some regulators want to go out there and use guidance instead of rules, and then they go out and enforce guidance, which is not—basically, guidance, as you well know, should be something more than clarification or to be an FAQ or something that they can give some guidance on, not a rule on which you can enforce the law.

Mr. GENSLER. I have, as it relates to the SEC, done as we had talked about in the past. I didn’t know if you were asking about guidance from bank regulators on other subjects, for instance, around climate. But as it relates to the SEC, yes.

Mr. LUETKEMEYER. Okay. Thank you very much. I see my time has expired, Madam Chairwoman.

I yield back.

Chairwoman WATERS. Thank you very much.

The gentleman from Missouri, Mr. Cleaver, who is also the Chair of our Subcommittee on Housing, Community Development, and Insurance, is now recognized for 5 minutes. Mr. Cleaver? Mr. Cleaver is not on the platform.

Next, we will have Mr. Green. Is Mr. Green on the platform? No?

Then, we will move to the gentleman from Florida, Mr. Lawson. You are now recognized for 5 minutes.

Mr. LAWSON. Thank you, Madam Chairwoman. And thank you for this hearing. This is a very good hearing.

Chairman Gensler, the committee has held three hearings on GameStop, and you have testified on this issue surrounding January the 28th. In each of those hearings, the payment of order flow has been raised as a topic. You have stated that the SEC is looking into the order flow and will make a determination on how to further regulate the product.

Do you agree that the commissions of free trading have, indeed, increased market participation among minorities and women? I am particularly concerned about the impact on zero-commission trades and whether those will be valuable in the absence of the payment for order flow? How will you ensure that any changes made by the SEC do not create additional barriers of entry for those in new market participation?

Mr. GENSLER. I think you raise an important point. The projects that we work on are trying to drive towards lower cost, greater efficiency, and greater competition in our markets, the stock market, in this case. And payment for order flow has been used by some brokerage firms, not all, but some brokerage firms, and they say this helps them provide a zero commission. There are other brokerage firms that have zero commission and don't use payment for order flow. Our focus will be on the overall market structure and, as you say, access to the capital markets. We have growing retail participation in the markets. That is good. Investing tends to be good, over time, but active trading on a daily basis often lowers returns, and some of these are also facilitating and even promoting that with the way they use behavioral prompts and the like.

Mr. LAWSON. Okay. Thank you very much.

As you know, under your predecessor, the SEC approved changes through the exempt offering private security framework that would increase the limit for how much an issuer can raise in a single offering, establish new safe harbors for integration, and ease some restrictions on communication between issuer and investors. Today, two-thirds of capital raised in the United States is done through the exempt offering. Could you elaborate on that please, sir?

Mr. GENSLER. You are absolutely right that over the decades, the SEC has facilitated through various exemptions, which are called exempt offerings, capital raising, both in the public market and in the private markets. And we have both that are facilitating capital formation, and I think what is important is to ensure that investors get full and fair disclosure in our public markets. That has been our basic bargain, but even in the private markets, there are pension funds that stand behind it, and working families and retirees who stand behind it that ensure that there is an appropriate set of regimes that help them as well.

Mr. LAWSON. Okay. Thank you. Let's see if I can get this other one in. Until recently, most broker-dealers that serve retail investment are not transacting cryptocurrency. In fact, they wanted nothing to do with it for a host of reasons. However, over the last year or two, this has changed drastically. In some cases, the crypto investment are traded on the same platform as securities. They are

almost tradeable in the sense that an investor can buy one and sell the other, and yet the crypto market is underregulated. Can you comment on that?

Mr. GENSLER. I think you are right. And I think, if we don't get these exchanges, these lending platforms inside of the public policy framework, a lot of people are going to be hurt. It is a highly speculative idea that a token that may not have any ownership, they are all structured differently, and its trading in the marketplace on the efforts of others, the potential that in the future it might be worth something because others will pay for it, is highly speculative, and it is not inside of our—they are not registering yet, and we are going to use our authorities. I think it is clear that many of these projects are within the securities laws, and we are going to use our authorities and try to get more of these projects and companies to register and be within the investor protection framework.

Mr. LAWSON. Thank you, Madam Chairwoman.

I yield back.

Chairwoman WATERS. Thank you.

The gentleman from Michigan, Mr. Huizenga, is now recognized for 5 minutes.

Mr. HUIZENGA. Thank you, Madam Chairwoman.

First, I want to associate myself with the comments from Mr. Lawson about his concerns about access for trades. Free stock trades is something that is apparently an anathema to some, and it may go the way of the free checking account if we are not careful with the Dodd-Frank Act Dodo Bird being released here. I do also need to comment: It might be Tuesday, but it is wacky Wednesday here on the Financial Services Committee, where stock trades aren't free, but spending trillions of dollars has no cost and is free, yet allowing taxpayers to keep their own money is a, "cost to government." So, it is an upside-down world for many Americans who are looking in.

Mr. Gensler, I want to talk about the PCAOB. You have heard a lot about ESG. We can have that conversation later. When the creation of the PCAOB happened, the word, "independent," appeared in the statute 10 times. I am concerned about your unceremonious dismissal of Mr. Duhnke, and then soliciting nominations for all five board positions. Obviously, that prompted a couple of other Commissioners to resign, with doubts about the independence of this. To date, you haven't provided a satisfactory explanation for removing Mr. Duhnke or your overhaul of the board, and, frankly, our investigation hasn't turned up any good reason for those actions. All of this, I believe, creates the appearance that you fired Mr. Duhnke to appease partisan groups on the left and people like Senators Warren and Sanders.

So, Mr. Gensler, is the PCAOB truly independent and does it, frankly, need to be?

Mr. GENSLER. Thank you for the question.

And I think the Supreme Court actually addressed this in a case about 11 years ago, on free enterprise, and my predecessor, Chair Clayton, used those authorities; the Supreme Court said that the five member Commission of the SEC has reporting to it this PCAOB. We review its roles. We review its standards. And, yes, as Chair Clayton did, we can remove the board.

Mr. HUIZENGA. And the ranking member is right. This is why this format is terrible. We can't get our questions answered. How does Mr. Duhnke's successor make decisions without thinking that the SEC Chair is looking over their shoulder?

Mr. GENSLER. In fact, I think that is what Congress put in place, that all of the standards and rules are reviewed by the SEC. I think, actually, that is what the statute says, that we are supposed to do that.

Mr. HUIZENGA. That is the structure. Okay. As long as we have that established, that is understood. So, here is what I would like to know. If the Commission has the review of the SEC, can you confirm that either your office or the Office of the Chief Accountant at the SEC has reviewed press releases or other materials from the PCAOB or its members before those materials have been made public?

Mr. GENSLER. I would be glad to chat with your staff to understand the question better. I don't think it is done press release by press release, but there are rules. For instance, when the Holding Foreign Companies Accountable Act came up to us, we put it out for notice and comment. We will vote on that in about a month or a month-and-a-half's time. I have a process around these.

Mr. HUIZENGA. Have you systematically required the PCAOB to run things through your office before they are cleared?

Mr. GENSLER. Again, as it relates to the rulemaking and the standards—

Mr. HUIZENGA. No.

Mr. GENSLER. —there is a process.

Mr. HUIZENGA. This is why it is important for us that the material that has been requested by the ranking member has been ignored. At this point, I would actually like to call on the Chair to join with that so that we can get all of this information. So, we will follow up on that.

Along those lines, I have actually dropped a bill today that is called the Streamlining Public Company Accounting Oversight Act. It will get rid of the PCAOB, and fold it into the SEC. I would like your review of that. I don't expect your reaction right now. I think that might get at what you are talking about, so we can just be honest with everybody that it is a political appointment and a political organization.

Quickly, is Facebook a utility? Should it be treated as a utility?

Mr. GENSLER. I think you are talking about a social media company and all social media companies, as private companies, that would be up to Congress to address—

Mr. HUIZENGA. No. The definition of what a public utility is, it clearly—because they are publicly traded companies as well. There are certain criteria which makes publicly held companies utilities. I want to know whether or not you think Facebook is a utility?

Chairwoman WATERS. The gentleman's time has expired.

The gentleman from Illinois, Mr. Casten, who is also the Vice Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mr. CASTEN. Thank you, Chairwoman Waters.

Chairman Gensler, it is lovely to see you again. You and I have spent a lot of time talking about gamification, and it certainly

seems to be in the news a bit today, and particularly in the ways that social media uses psychological triggers to drive some fairly self-destructive behaviors. There was the comment that Ms. Haugen made on, “60 Minutes,” earlier this week, “If you make the algorithms safer, people will spend less time on it.”

And at least for me, that sort of felt like a gut punch in our Robinhood hearings, because what the algorithm is to Facebook is what gamification is to Robinhood, and, of course, the pernicious incentives created by ad revenue for Facebook are quite similar to the pernicious incentives created by payment for order flow to Robinhood especially, when they are earning a percent of the spread in the PFOF, not just a flat fee.

My question for you is, in your digital engagement practices work you are doing, I am hoping you can confirm for me that those issues, and specifically the conflicts between looking out for investors’ best interests in the ways that those companies earn money, that that will be a subject of your investigation. And if you can confirm that, that is great. I can go on to the next question. And, if not, I would love to hear, why not?

Mr. GENSLER. Yes. I think it is central. I think it is the issue of our day that digital analytics are being used to not only optimize for our returns but may be used to optimize for the company, the platform’s revenues. And, if they are being done by a robo adviser, an investment adviser, or brokerage, then that creates a conflict. It might create a more fun environment for us. That is okay. But is it also creating more revenues, and what is that conflict there, and how do we protect investors?

Mr. CASTEN. Okay. I am delighted to hear that, and we can follow up offline.

I want to shift to climate. Some of my colleagues across the aisle seem to think that the primary question in our climate is whether disclosure might increase the compliance cost for small mom-and-pop businesses. I would suggest that that is not even in the top 100 issues that are caused by climate [inaudible].

Putting that aside, the bill that I introduced that we, of course, passed on the House Floor to direct the GAO—not your Agency but very similar to the work you are doing on climate risk disclosure—was really driven by three issues. Number one, there is massive investor demand. There are going to be almost a third of assets under management in ESG funds, so let’s give investors what they want as long as we are espousing the supporting interest of investors.

Number two, investor protection. I would echo what Mr. Luetkemeyer said, that as long as a company can stand up and say, “I will be net-zero by 2035,” and their auditor has no way of knowing what that means, that we have a gap and I am delighted to see you starting to put some boundaries around what those rules are.

Number three, I am not sure if this is subject to your jurisdiction or others, but it is a broader question of financial market stability. If we don’t have the data from the affected firms, then we don’t know where the risks are parked in our financial structures, where these cash flows are going to happen from—we are looking at huge cash flows from transition risks, from physical risks, and we have a separate bill that we have been working on with Senator Schatz,

which is really more directed at Treasury to figure out how to sort of calculate that and monetize it and put barriers around those financial risks.

But one of the pieces that, as we have dug into this is, I haven't been able to get a good answer to is—figuring out where the monetary flows are going to be is the easy question. Figuring out the capital structure of those flows is really hard. So, if I know that a certain company is going to see a huge loss of value, but I don't know how much of their capital structure is tied to senior debt, junior debt, and equity in trying to figure out where that sits because even for public companies, sometimes the precise rules of their credit agreements are not always disclosed.

My question is, in your work on climate disclosure, are you going to be requiring companies to provide details of their capital structures in addition to their contribution or exposure to climate change, or is that a question better asked to other financial agencies?

Mr. GENSLER. Given that the clock is ticking, it might be good to follow up, and we can chat offline after this hearing, but our focus is really, what do investors demand and want to make their investment decisions? So, for public companies, it is around that and the climate risk, qualitative and quantitative disclosures, but I would like to better understand about the capital structure because companies already have to disclose—public companies—a lot about their capital structure, and it sounds like you have had some thoughts that that is,—how shall I say, falling short in some way. I would like to understand where that is falling short with investors as, in essence, our clients are the investors.

Mr. CASTEN. I apologize for rambling on so long, but I am out of time, and let's follow up offline.

Madam Chairwoman, before I yield back, I would like to request unanimous consent to include in the hearing record the following letters supporting many of today's discussion drafts from Americans for Financial Reform, Public Citizen, and the Ohio Public Employees Retirement System.

Chairwoman WATERS. Without objection, it is so ordered. Thank you.

Mr. CASTEN. Thank you.

And I yield back.

Chairwoman WATERS. The gentleman from Kentucky, Mr. Barr, is now recognized for 5 minutes.

Is Mr. Barr on the platform?

If Mr. Barr is not there, we will go to Mr. Williams.

The gentleman from Texas, Mr. Williams, is now recognized for 5 minutes.

Mr. WILLIAMS OF TEXAS. Thank you, Madam Chairwoman. And, first of all, I want to say, just in full disclosure, that I didn't go to Wharton, but I am a business guy, and I know that when you increase taxes, that is bad, and when you cut taxes, that is good. Maybe that will help some of your thought process.

In any industry, allowing the private sector to innovate is key to bringing new products and services to the marketplace. This has been especially true in the capital market space with the advent of zero-cost trading because of payment for order flow. This part-

nership has allowed an entire generation of investors to enter the marketplace for the first time and has made zero-commission trading the new industry standard. And, in the past, you have been recognized for how payment for order flow has created a significantly lower-cost environment for retail traders to place trades. There are studies which have shown that this practice has resulted in a price improvement of over \$3.7 billion in the last year alone for retail investors.

Despite these benefits, the SEC is still contemplating a complete ban on this practice and even expanding the definition to include rebates being offered by the exchanges. This seems like a drastic measure that is a response to misdiagnosing the entire GameStop saga that happened earlier this year.

Mr. Chairman, it is good to see you, again, and as you look at making changes to this practice, I urge you to also consider the benefits that this has given all retail investors. My question is, can you describe the overall growth trends of retail investor participation since the advent of zero-commission trading, and what you think would happen if payment for order flow or these rebates were eliminated?

Mr. GENSLER. I thank you for that. And retail investing has increased. It has increased probably for multiple reasons, but zero commission and, frankly, just even the ability to trade on a mobile phone with ease has facilitated it as well, regardless of the price. There are a number of brokers that offer zero commission and do not do payment for order flow. What I have asked staff is, these payment for order flows and, yes, rebates on the platforms, the stock exchanges, and the like, is this the best way to promote competition and efficiency? Is it the best way to promote fast execution?

And you mentioned price improvement. Price improvement is being measured against an old measuring stick, this thing called National Best Bid and Offer, which doesn't include what is in the dark markets, what is being internalized. It doesn't even include everything on the New York Stock Exchange or on NASDAQ. So, I have asked, how can we look at this, and look at this for investors and companies raising money to be more competitive, transparent, and efficient?

Mr. WILLIAMS OF TEXAS. Okay. Thank you. We have seen a troubling trend within the Democratic Party of calling on financial regulators to enact their agenda when they realize they will never be able to pass it in Congress. We have seen lawmakers urge the banking regulators to force their regulated entities to debank legal industries that have fallen out of their political favor, such as oil and gas or the gun industry. We are now seeing similar calls coming to your Agency, which is in charge of reviewing the disclosures of over 7,000 publicly traded companies and \$100 trillion traded annually within our capital markets, to expand your footprint into climate process. So, by calling on a more stringent ESG regime, we are trying to turn the many economists and financial experts at the SEC into environmental scientists who will force companies to adhere to a moving target of climate change goals coming from whichever party controls the White House.

And, as we create more uncertainty surrounding what information will be deemed material, I am really concerned that everyday investors will ultimately be hurt by the activists who might be the loudest in the room but are not personally invested in some of these companies. Quickly, Chairman, how will you ensure that investors are not going to be harmed because of activists pushing their agenda into a space where they do not care about any individual security?

Mr. GENSLER. I would just say how I will be motivated and what I will ask the staff. It is about investors, and it is what Congress has asked us to do. Within our chalk lines, disclosure, full and fair disclosure, is what Congress has asked us to do. And what we have now in the 2020s is that increasingly large numbers of investors want information about climate risk. So, we can play a role at the SEC to bring some consistency, comparability, and make sure those disclosures are decision-useful as earlier discussions in this committee today were, to make sure that folks aren't just saying they are green or sustainable and they are not. I think it can help companies and investors, and so, to me, it is staying within what Congress has asked us to do.

Mr. WILLIAMS OF TEXAS. I thank you for your testimony, and I yield back.

Chairwoman WATERS. Thank you.

The gentleman from Connecticut, Mr. Himes, who is also the Chair of our Subcommittee on National Security, International Development and Monetary Policy, is now recognized for 5 minutes.

Mr. HIMES. Thank you, Madam Chairwoman.

And I have a question for Chairman Gensler, but I do want to take just a second to try to—I am not a witness here, so I can probably use more blunt language than the chairman can use. My friends on the other side of the aisle are obsessed with this preservation of payment for order flow. I can say it more bluntly: Yes, when a broker uses payment for order flow, you do see price improvement, but you see price improvement off of a really lousy price, a terrible price.

And it is a truism in our capital markets that big institutional players get much better pricing—by the way, across-the-board on everything—than retail players do. And there are entire segments of the industry that are designed to sort of make profits out of that gap between the pricing that retail investors get, retail investors meaning individuals and others, and what institutional investors get. What I would really love to see happen here, rather than seeing my friends on the other side of the aisle stand up for the preservation of a cynically-misleading concept like price improvement, to actually dive into the question of why institutions get such better pricing on almost every product than individuals do?

I just want to make that point, but what I want to do with my remaining minutes—Chairman Gensler, it is great to see you again. I am going to ask you to step a little bit outside of your comfort zone, because you are more knowledgeable than almost all of us, and probably all of the regulators on the issue of cryptocurrency regulations, something of interest to my subcommittee and Mr. Sherman's subcommittee.

I want to turn over my remaining—I can't see the clock from here, but 3½ minutes or so, to ask you to give us some guidance on the topic. And what I mean by that is, there is legislation flowing around. Mr. Beyer has a piece of legislation that sort of departs from the traditional Howey construct of what would be a security. You have focused us on exchanges. Congress is demonstrating its ability to do very little these days. I am going to ask you to take the rest of my time to give us some guidance on how we should prioritize the legislation that we propose between exchanges, between the arduous work of defining who should regulate what type of cryptocurrency.

Let me just turn over the time to you so that you can give us some guidance on how you think we might most fruitfully use our time to try to address those areas in which there is likely to be bad behavior?

Mr. GENSLER. Thank you. At 2 minutes and 20 seconds, I think that what we have here is a number of innovations—why I am focused on the platforms, the trading platforms and the lending platforms, is because investors basically are giving ownership rights up. They transfer what is called a private key to the platform in most of them, and the platforms take custody, and those platforms then either trade on our behalf or lend to us and the like.

So, I think such a tremendous amount of activity happens there, and it is a place where we could get better investor protection and customer protection alike, even in the decentralized platforms, or so called DeFi platforms, there is a centralized protocol. Although they don't take custody in the same way, I think those are the places that we can get the maximum amount of public policy, whether it is for anti-money laundering, whether it is for tax compliance, or whether it is for investor protection, which we so care about at the SEC. I do think that these platforms would like to say: Oh, not us. We are regulated by 49 States under money laundering.

But I think regulating these platforms like we regulate MoneyGram—right there that sort of shines a spotlight that that doesn't make much sense if we are talking about financial stability and we are talking about investor protection and the like.

Mr. HIMES. Chairman, regulating exchanges and clearinghouses is not a foreign concept to us. Would you have us skew closely to analogies between the cryptocurrency exchanges and currently-existing legacy exchanges, or do we really need to craft a whole new structure? Coinbase is out there with an idea of setting up yet another regulator. Should we sort of use current existing regulations of exchanges as our basis for—

Mr. GENSLER. It will be for Congress to decide, and some were quoting my testimony of prior years. Congress could decide, but we have two really great market regulators, the SEC and the CFTC, and I have been honored to Chair each of them, and we have different authorities, derivatives, commodities, and securities. I don't think that we need another regulator. There are things that could be done to ensure the smoothness between the two agencies, and CFTC Chair Rostin Behnam and I have been talking about that, even if Congress doesn't act.

Chairwoman WATERS. Thank you very much.

The gentleman from Kentucky, Mr. Barr, is now recognized for 5 minutes.

Mr. BARR. Thank you, Madam Chairwoman.

And I appreciated your comments, Madam Chairwoman, earlier in the hearing that you wanted to make sure we were adequately funding the Securities and Exchange Commission because they were the cop on the beat. I just want to note for the record that the chairwoman is for funding the police, and I just appreciate that.

Chairman Gensler, thank you for appearing before us, and I appreciate our conversations about the importance of materiality with respect to climate risk disclosure. Earlier this year, you and the Commission issued a request for information (RFI) on climate risk disclosure. A common theme among respondents to that RFI was the importance of maintaining this long-held materiality threshold.

I agree with these suggestions. Materiality must be preserved, but I want to point out that materiality is determined by investors' need for that information to make informed capital allocation decisions. It is not in order to satisfy the leadership of some large institutional investors who are not necessarily aligned with retail investors in terms of their demand to name and shame companies or bias the market against certain politically-unfavored industries. That is the difference between the standard of materiality versus what some large institutional investors demand.

How do you plan to ensure that the SEC climate disclosure rule maintains the threshold of materiality and does not burden investors and issuers with an avalanche of extraneous information?

Mr. GENSLER. I share your view that it is about investor demand, whether it is somebody buying 50 shares of stock or a fractional share even or the large asset managers and pension fund managers that are investors as well. The pension fund managers, the asset managers are representing the rest of us, representing the public, and I share your point—

Mr. BARR. How well do you think they represent the rest of us, and how well do you think that proxy process actually accurately reflects the demands and the wishes and the desires of those retail investors?

Mr. GENSLER. Our job at the SEC is to make sure that it represents it through what is called the duty of care, the duty of loyalty, the two laws passed back in 1940 that are really important, that investment managers are representing through their fiduciary duties—

Mr. BARR. The reason why I asked that is because as we discussed, and as I talked to the investment advisers and broker-dealers in my district, ESG is a very low priority of most retail investors. Retail investors care about returns, and what troubles me—and I want to ask you if you agree with this, the analysis that is public record—is that many of these ESG funds have fees that are 43-percent higher than non-ESG funds and cut into those retail investor returns. Does that trouble you?

Mr. GENSLER. I think that there are two parts to that. One is that I have asked staff to make sure that fund managers that are claiming to be green or sustainable or climate-free, what stands behind that, that we should put out some rules on that. And, if my

fellow Commissioners agree, we will put that out for public comment.

But a second thing is, how do we promote greater competition to bring down some of those fees in the fund management space? And I think that being clear on the naming and what stands behind those names can also help in the competition on the fees themselves.

Mr. BARR. As you move forward with your climate risk disclosure rulemaking, I just want to stress the importance of this materiality standard and what it actually is, because to rely solely on the comments that come in and just ignore the legal definition of materiality, I think would miss the mark, because materiality is about the investors actual need for that information to make informed capital allocation decisions; it is not just about large institutional investors' desire to name and shame politically-incorrect companies. I encourage the Commission to look at materiality from the traditional, conventional, legal standard of what materiality actually means.

In terms of liability protections, I do worry about the subjectivity of this, the concept of climate risk disclosures relying on subjective and untested metrics. Do you have plans to provide liability protections for issuers? What are your plans to ensure that these disclosures are preserved exclusively for informing investors and making the risk/reward decisions and not hijacked by enterprising trial lawyers for frivolous lawsuits?

Mr. GENSLER. Like all of our disclosures, they are based upon, as you say, what do investors want, what do they take into consideration, or, as the Supreme Court has said, what is—if I remember correctly, the substantial likelihood that a reasonable investor finds significant in the mix of information for an investment decision, and that investment decision is really the important thing. And that is why we put it out for notice and comment. Investors get to weigh in.

Chairwoman WATERS. Thank you.

The gentlewoman from New York, Mrs. Maloney, who is also the Chair of the House Committee on Oversight and Reform, is now recognized for 5 minutes.

Mrs. MALONEY. Okay. Thank you. I apologize. I had to Chair an Oversight and Reform Committee hearing, and we just finished.

Chairman Gensler, it is great to see you, again, and I want to first ask you about cryptocurrency. You called it a, "highly speculative asset class." Do you think—and it is really a speculative investment—it should be treated like a security, regulated like a security?

Mr. GENSLER. Congresswoman, it is good to see you again. And I think it is always based on the facts and circumstances, but many of these projects—and there are 5,000 or 6,000 of them—but many of them are basically saying to the investing public, give us your money, and we have a small group of entrepreneurs and computer scientists who are going to build something. And, based upon that, there is a hope or an anticipation of reward or profit in the future. Jay Clayton, my predecessor at the SEC, said in congressional testimony that most of these, or many of these fit that definition.

Mrs. MALONEY. D you think it should be regulated like a security?

Mr. GENSLER. I think that I have asked projects to come in and talk to us because I can't say that it all fits together well, let's say, in our transfer agent rules and some of the intricate underpinnings of our capital markets. But Congress painted with a broad brush to protect the public against fraud, and that is done through our securities laws when people are raising money from the public.

Mrs. MALONEY. Okay. Do you believe the SEC has all the authority that it needs to regulate this cryptocurrency if you should decide to do it or does Congress need to give you more authority to be able to regulate the cryptocurrency?

Mr. GENSLER. Thank you, and it is a question that the ranking member asked in a little bit different way earlier, which is, I think our statutes are clear, and Congress painted with a broad brush what is a security, but I think working with Congress, there are some gaps and there are some places that we can work, whether it is our relationship with our sibling agencies in the market regulatory space but also as it relates to, for instance, what has come to be known as stable value coins and how to think through that with the bank regulatory regime as well.

Mrs. MALONEY. I would be happy to work with you in this area, and it is a growing prevalence in the district that I represent. Can you give the committee an update on your current banking with Regulation Best Interest, the so-called fiduciary rule, and whether you intend to take further action to strengthen this rulemaking?

Mr. GENSLER. I think it is important that this rule live up to its potential, that, "best interest," really does mean best interest. So, working with our examination staff, working with our Division of Corporation Finance, working with—we just hired an excellent person who is a senior adviser to me directly, to ensure that the retail public gets the best, but I am also asking the staff to consider, how do we ensure that the brokers and the investment managers understand their duties under that rule and to ensure that best interest means best interest.

Mrs. MALONEY. Okay. That sounds good. Lastly, this summer the SEC approved NASDAQ's board diversity proposal, and they have implemented it. And earlier, with the support of Chairwoman Waters, Representative Gregory Meeks, and many others, we passed a bill that would call upon the SEC to disclose the diversity on boards, both for gender and for minorities, and other information. And do you intend—you could do a lot in that area just on your own. It has passed the House; it is now in the Senate. Do you intend to do anything in the board diversity area?

Mr. GENSLER. Again, I say this probably more than you would like to hear, but I have asked staff for recommendations, and in two areas related to this, one with regard to the boards and board diversities, what recommendations that we, as a Commission, meeting investor demand could do, but also more broadly, the workforce, the entire workforce of what we have come to call human capital disclosure. That is not just about part time versus full time and the pay rates and the like, but it is also about the diversity of the workforce as a whole. And on the earlier point, if I might just say, on regulation best interest, if the rule doesn't

work, ultimately, we are going to look to make sure that brokers ensure that the investing public truly gets best interest. I want to make sure that I put a real comment on that.

Mrs. MALONEY. Okay. Thank you so much for your time.

I yield back.

Chairwoman WATERS. The gentlelady's time has expired.

The gentleman from Arkansas, Mr. Hill, is now recognized for 5 minutes.

Mr. HILL. Thank you, Madam Chairwoman. I appreciate that, and I appreciate the hearing. It has been a very educational hearing.

I also appreciate Mr. Gensler's responses to our questions, and following up on Mr. Barr and also Mr. Luetkemeyer on the ESG industrial complex out there in the mutual fund asset management industry on advertising, branding, and analysis for ESG type funds, I think that is an important part of your testimony. I am glad you referenced it, both in the stock selection, and the asset allocation [inaudible].

Mr. GENSLER. Did you go mute?

Ms. GARCIA OF TEXAS. Madam Chairwoman, we cannot hear him.

Mr. HILL. I don't know what happened there. It just kind of reverted to mute. I apologize. It is unmuted.

Chairwoman WATERS. We can hear you now.

Mr. HILL. Okay. I don't know what happened there. So, I don't know what you heard and what you didn't hear.

Mr. GENSLER. I heard you compliment the gaming—

Mr. HILL. Thank you for that. I appreciate Representatives Luetkemeyer and Barr bringing that subject up, and I don't know why it went on mute, as I said. So, I am glad that is being looked at, because I think, truth in labeling there is important under the securities laws, that we are not misleading investors and we are providing a product that has real value and not overcharging for a product. When I look at an ESG fund that has a .9777 percent correlation with the S&P 500, it does make me question whether or not it is an ESG fund.

Mr. Gensler, we talked when you were last before the committee about materiality, and you recognized that, under 12b-20, all public issuers have a duty to disclose every material aspect in their business on their financial statements. Is that correct?

Mr. GENSLER. I would have to look at those provisions, but there is a requirement [audio malfunction].

Mr. HILL. Yes. You talked today about asking the staff to look at both qualitative and quantitative issues, and on the quantitative issues, have you personally read the [audio malfunction].

Madam Chairwoman, this thing keeps muting without me touching the computer, so my irritation level is rising, but let me continue. That time, I noticed it.

On the issue of quantitative, Mr. Gensler, have you read the task force disclosure report, the so-called Bloomberg report on the quantitative analysis on climate disclosures?

Mr. GENSLER. [Audio malfunction].

Mr. HILL. Good. Thank you for that.

And in that, you note that they question the viability of the Scope 1, Scope 2, and Scope 3 emissions report and recommend

other changes, and yet, we have legislation demanding that use and mandating it.

You are asking the staff to look at all sources of emission types, not just Scope 1, Scope 2, and Scope 3, I presume?

Mr. GENSLER. We are, and I hope that after public comment [audio malfunction].

Mr. HILL. And on the qualitative focus that you have when you try to have companies describe in their financial statements qualitative factors about their climate resiliency and planning, how do you establish a liability standard for that? Is that the same as a material statement and the financial statements?

Mr. GENSLER. We currently have [audio malfunction] financial statements, called management analysis, risk, and the like [audio malfunction] Qualitative risk [audio malfunction]. And so, I think it would be [audio malfunction] see what happens after public comment.

Mr. HILL. And one of the biggest challenges in the financial task force report on climate disclosures is that it really is not possible to do make it comparable and accurate [audio malfunction].

There it goes again.

Madam Chairwoman, I am going to yield back, because this is too frustrating.

And let me say again, I hope that we will have hearings in person and that we will stop these kinds of online issues. You have heard Members today talk about how they can't have a fair and open interchange with witnesses. And when we have technology that simply mutes itself, we ought to all question any technology the committee is using.

I yield back.

Mr. HUIZENGA. And if the gentleman will yield, frankly, all of Mr. Gensler's answers to you were in a three-part echo on my end. I doubt I am the only one [audio malfunction].

Chairwoman WATERS. The gentleman is out of order.

The gentleman from Illinois, Mr. Foster, who is also the Chair of our Task Force on Artificial Intelligence, is now recognized for 5 minutes.

Mr. FOSTER. Thank you. Am I audible and visible here?

Chairwoman WATERS. Yes, you are.

Mr. FOSTER. Okay.

Thank you, Chair Gensler.

First, are you making contingency plans for dealing with the market chaos that may result if Senate Republicans force us into default?

Mr. GENSLER. I thank you for the question.

I do want to say, if Representative Hill would like to meet with me one on one or anything next week, or in the next few days, I would be glad to do that.

And Representative Huizenga, I thank you, because I was hearing that echo as well.

But on your substantive point, Representative Foster, I think that as we get closer to October 18th, we need to understand that markets can get pretty—they can do things that we don't expect. That as mutual funds, as big banks, as hedge funds, as capital market participants start to anticipate what will Congress do, and

what will Congress not do, we will be in uncertain times in those last several days.

And God willing, everything works out. But if we were to end up with a default, we will have a whole lot of uncertainty in major market participants in the several days before as we would move into that uncertainty as various participants react.

Mr. FOSTER. I understand that you can't go into details now, but would you be willing to provide a confidential briefing to interested members of this committee on that scenario planning as it approaches, as the deadline approaches?

Mr. GENSLER. If we could follow up, I would certainly want to work with the Chair and probably with Secretary Yellen on that, because that is really where the main authorities and so forth are, but I would say that—

Mr. FOSTER. You will have to deal with the market chaos.

Mr. GENSLER. I do not take lightly the uncertainties that will start to develop right around that time.

Mr. FOSTER. Now, from the point of view of the markets, is there any downside that you perceive in response to all of this brinkmanship that the debt limit is just either outright repealed, or through reconciliation, simply raised to an Avogadro's number of dollars or some enormously high number that makes it irrelevant?

Mr. GENSLER. However Congress addresses it, it would lower uncertainty in the market, and by lowering uncertainty in the market, you usually lower the cost of capital for those raising it.

Mr. FOSTER. Okay. I would just like to mention that in terms of an outright repeal, I have a bill, the End the Threat of Default Act, with over 50 House cosponsors, which will simply do just that. And I invite and welcome all support from all corners on just getting rid of this silly rule that we made up for ourselves.

I would like to return once again to payment for order flow. As we all know, zero-commission trading is not free, because the retail customer often pays for it in terms of less than optimal order execution.

The difficulty here, as I see it, is that there is no transparent market between trading platforms that includes good knowledge for investors of the quality and the total cost of order execution.

Now, there are two possible responses to this that I would like to get your reactions on, that either the SEC or Congress could contemplate.

The first is simply requiring that retail customers receive, along with their order confirmation, a summary of any fees or commissions plus a summary of how the price they actually receive compares to some fair estimate of the market price, for example, midpoint of the NBBO or some more sophisticated estimate.

This would allow investors to see over time whether the total cost of trading on one platform was better or worse than another, and to move their business to the platform that gave them the best total cost of trading.

That is the first suggestion to which I would like you to react.

A second possibility is simply to allow retail investors to request that their order and the platform that it was executed on be made public, not the investor identity but the platform identity. Also, the time they placed the order and the price they received.

This would allow third parties looking at this additional publicly-available data to give very high-quality, high-statistics evaluations of which platforms are giving the best total cost to retail investors in different market segments.

Do you have any reactions to these? Are they implementable? Would they work as I would imagine they would in making a more transparent market?

Mr. GENSLER. If it would be okay, I would like to suggest that your staff and some SEC staff could review this. You have really raised, how can we make these markets more efficient, more competitive? I think it would probably help to hear these ideas and sort them through outside of the hearing just to see whether they could be part of the mix.

Mr. FOSTER. Thank you. I am out of time here, but I think transparency on total cost of trading should be our guide star on this. And I yield back.

Chairwoman WATERS. The gentleman's time has expired.

The gentleman from Minnesota, Mr. Emmer, is now recognized for 5 minutes.

Mr. EMMER. Thank you, Madam Chairwoman. Can you hear me? Chairwoman WATERS. Yes, I can hear you.

Mr. EMMER. Thank you.

Chairman Gensler, like everyone else, I want to thank you for appearing before the committee today. I appreciate your time.

You have already covered this topic with some other members, but I want to go into it again. There are millions of Americans, as you know, who hold cryptocurrency. Specifically, over 55 million Americans are now engaged in this asset class, and the value of these cryptocurrencies, the value of the market, is approximately \$2 trillion.

You have been outspoken in that you think most cryptocurrencies on the market are securities. I couldn't disagree with you more thoroughly. I believe most cryptocurrencies are commodities or currency.

But for the purpose of better understanding your perspective, I have several quick questions I would like to run through during my time, and I would appreciate quick responses to each question.

Chair Gensler, let's say someone who issued a token agrees with you and thinks that their token is a security, and they want to register it with the SEC. If they register it, can they trade it on the New York Stock Exchange, or could they trade it on NASDAQ?

Mr. GENSLER. It would somewhat depend on NASDAQ's and the New York Stock Exchange's listing rules and how they register it. But there are multiple ways to register it. If they register it, and the New York Stock Exchange and NASDAQ said yes, that might facilitate it. Nobody has asked to do that, as far as I understand.

Mr. EMMER. Actually, the answer is, "No."

Another question, can a broker-dealer, like Charles Schwab, deal in a digital asset that has gone through SEC registration? In other words, would they be able to trade these digital asset securities in custody?

Mr. GENSLER. The custody is really the issue that you have mentioned. We have not been able to sort through that. There is a feature of crypto assets which is that a private key transfers owner-

ship. That is a feature, but it also creates challenges, or some would say it is both a feature and a bug of the custody of those crypto assets.

Mr. EMMER. Again, I believe the answer is, “No.”

And I think earlier today you used the term, “stable value coins.” There is no such thing. Value is a term that you put in there. There are stablecoins.

Chair Gensler, as you know, there are about 100 tokens with a billion-dollar market cap. Let’s say you deem one of these coins with a billion-dollar market cap and tens of thousands of investors as secure. What happens to those investors, sir?

Mr. GENSLER. If the coin were to come in and to actually register, then those investors get the benefit of our securities laws. Right now, they don’t have the benefit of that basic bargain that we protect people against fraud and manipulation in our capital markets is that they get full and fair disclosure. They are not getting that right now, and it is falling short, and people are going to get hurt.

Mr. EMMER. Chair Gensler, actually, what will happen under that scenario is that the value of the token will plummet, and retail investors, the very people you are supposed to protect, will not be able to trade it.

I guess where I am going to go with this is, if there is no path for them to be traded anywhere, wouldn’t investors be hurt by your enforcement actions? And what are you doing to solve this problem? What are you going to do?

Mr. GENSLER. What I have said publicly, and I mean this, is come in and work with us. If the rules that were written in other decades don’t quite fit these digital investment contracts—and that is what many of these are; they are entrepreneurs, computer scientists who are raising money from the public, and the public is anticipating profits.

And that is why Congress painted with a broad brush, and the investing public is relying on some group of entrepreneurs and computer scientists for their profits.

And I am glad to work with Congress, if you want to repeal the laws as they are, so that fewer people are protected against fraud in these markets.

Mr. EMMER. Actually, Chair Gensler, I appreciate the answer. I don’t know—at the end, we still disagree on the securities aspect. I think the vast majority are currency or commodities.

But this is why it is really important for the SEC to develop a framework in which the crypto industry can operate. Crypto is one of the highest-performing asset classes in decades. Retail investors got into this space before institutional ones.

Your job, the SEC’s mandate, is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. When you make conclusory public statements, and regulate through enforcement actions, you jeopardize that mandate.

I encourage everyone to take a look at my bipartisan bill, the Securities Clarity Act, which amends securities law with a new definition, the investment contract asset, so the SEC can work with issuers to swiftly determine when a token is offered as part of a securities contract and when it is not.

Thank you again, Chair Gensler.
Madam Chairwoman, I yield back the balance of my time.

Mr. GENSLER. Thank you.

Chairwoman WATERS. Thank you very much.

And, Mr. Gensler, I want you to know that I appreciate your known expertise on cryptocurrency.

With that, the gentlewoman from Iowa, Mrs. Axne, who is also the Vice Chair of our Subcommittee on Housing, Community Development, and Insurance, is now recognized for 5 minutes.

Mrs. AXNE. Thank you, Madam Chairwoman.

And thank you, Chair Gensler, for being here. And thank you for your willingness to work on modernizing our corporate disclosures that, of course, look at gamification on our trading platforms.

I am very focused on equity for the people who want to invest, and I appreciate you wanting to make sure that this is an opportunity for people across our country.

But I want to dig into a different aspect of investor protection, and we are talking a lot about crypto today.

Chairman Gensler, can you briefly describe what the Securities Investor Protection Corporation does?

Mr. GENSLER. The Securities Investor Protection Corporation, or SIPC, as it is sometimes known, was set up by Congress to protect the retail public who left money at a brokerage firm, and if that brokerage firm wasn't properly keeping that money segregated and protected, it went bankrupt, in essence, the losses that might come. I don't claim to be a full expert, and I am sure I have missed some parts of it, but I think that is the basic bargain.

Mrs. AXNE. Okay. So, basically, when someone owns a security in their brokerage account, they have some protection if the broker goes bankrupt. Is that correct?

Mr. GENSLER. That the broker didn't take that security and give it to somebody else and the like. You still have market risk. Individuals have market risk that SIPC doesn't protect them from, as I understand it.

Mrs. AXNE. Okay. But what I want to get here is, I don't think that applies to commodities or some other assets. Is that correct?

Mr. GENSLER. I would want to work with you on that, but I think that is correct.

Mrs. AXNE. Okay. Here is what I am wondering. On some of our platforms, you can trade crypto literally right next to stocks for a token that isn't a security. What are the differences in protections for those investors?

And we have these up on our platforms. Do you think these investors on these platforms are likely to know that these protections are different? I am hearing you say they are different. What is the difference between crypto and a stock? And do you think our folks even realize that when they come on, as far as protections go?

Mr. GENSLER. I think you are right, that the investing public is not getting protected right now, whether it is a digital asset that is a security. And many of them, I think, would—while Representative Emmer and I have a little difference of opinion on that—pass the Howey Test and our securities.

But some, as you say—a few might be commodities. And the Commodity Futures Trading Commission (CFTC) does have en-

forcement authorities around commodities. CFTC Commissioner Dawn DeBerry Stump put out a paper recently which highlighted that they don't have the regulatory authorities to write the rules of the road for those exchanges.

There are gaps there, both if they are a commodity, and gaps if the exchanges are not registered as the New York Stock Exchange is registered.

Mrs. AXNE. Okay. So, if we tie this back to the payment for order flow, on securities, the broker has to disclose, of course, how much they are paying and how those orders do. I think those disclosures aren't really sufficient and could be a lot better.

But, Chair Gensler, are there any such disclosures like this for crypto assets?

Mr. GENSLER. There are not required disclosures. Some of the brokers are trying to do some voluntary disclosures on things that are basically similar to the payment for order flow for crypto. But you are absolutely right, they are not doing so with the fullness as under our securities laws.

Mrs. AXNE. Something that caught my eye is just how much money some brokers are actually making from payment of just their crypto orders. If I am correct, and I think this is true, Robinhood made more than half of their revenue from crypto in the second quarter. And, yet, we don't have the same disclosures about how that is earned for them and how their users might be doing these orders.

Are there steps that the SEC can take to ensure that investors understand the protections they have when trading certain things, and information that they might lose in certain areas on the platform? Or do you think that we should just make sure that anyone trading on those platforms has the same protections regardless of what they trade? And is just disclosure enough there, or do we need to be moving in a different direction?

Mr. GENSLER. I think that decisions Congress made long ago, in the 1930s, still stand true today, that the trading platforms, the exchanges of the day back then that come in and register and follow a set of rules, how they expose orders to each other, how they compete in the marketplace, how we protect people against front running, and how we protect and promote markets through transparency.

So, these platforms, in a regulated space, would be better for investors. And right now, we don't have that, and this is a highly-speculative class of crypto tokens.

I truly think people are—we are probably going to have hearings in the future on what went wrong here, and one of the things will be that these platforms didn't come in and get regulated with the appropriate authorities.

Chairwoman WATERS. Thank you very much. The gentlelady's time has expired.

Mrs. AXNE. Thank you.

Chairwoman WATERS. The gentleman from Georgia, Mr. Loudermilk, is now recognized for 5 minutes.

Mr. Loudermilk?

If not, is Mr. Zeldin on the platform here?

If not, let's go to Mr. Mooney.

Mr. Mooney, you are now recognized for 5 minutes.

Mr. MOONEY. Okay. Thank you very much. I appreciate the hearing and the opportunity to participate. These are some important issues here that we are discussing.

Chairman Gensler, I would like to focus on the difference between what is considered guidance and what are considered rules.

Changes in rules and enforcement have large ramifications for market participants, both large and small. That is why it is important for investors to understand the difference between binding and nonbinding directives from the SEC.

Now, your predecessor, Chairman Clayton, was very clear on this issue. He released a statement in September of 2018 explicitly clarifying that, "All staff statements are nonbinding and create no enforceable legal rights or obligations."

Chairman Gensler, will you commit to releasing a similar statement clarifying that all staff statements are nonbinding?

Mr. GENSLER. Let me say it in my own words.

I think that rules put out through notice and comment to the public benefiting from economic analysis is what we are trying to do on many of these issues we have talked about today.

Guidance can also be an important tool of an agency like the SEC where market participants come in and say, "There is a rule already. Can you please issue guidance within that rule?"

And we have been using this for many decades, whether it is in the accounting area, the auditing area, sometimes investor alerts, investment management. I think this is an important tool, but it is always within the rules that are already outstanding.

Mr. MOONEY. Okay. Thank you for that answer. I encourage you to release a similar statement. I think doing so would provide clarity for investors who want to make sure they understand the rules they need to follow.

Let me just give you an example. Whistleblower reforms that were adopted in 2020 codify existing procedures and improve the SEC's ability to provide awards that incentivize whistleblowers to step forward. In August, the SEC, under your leadership, released a statement regarding the whistleblower rule.

The SEC is able to revise and visit old rules and make changes, obviously, to the notice and comment rulemaking process, as we just discussed. But in this case, it appears the Commission attempts to nullify an existing rule simply through a public statement.

In response, SEC Commissioners Peirce and Roisman said that this action raised a dangerous precedent and, "reduces the certainty of law."

Chairman Gensler, in this case, it seems you adopted a significant change in policy simply through a Commission statement. How is that not a way to avoid the notice and comment rulemaking process we just discussed?

Mr. GENSLER. The whistleblower program is a really important program to help protect the markets, and what I asked staff to do is look at our program and ensure that that whistleblower release of last year and the prior rule set are the things that we could do to ensure that whistleblowers in such a critical program have not only the basic protections, but also, as Congress laid out, that they,

when it is appropriate under the rules, get their awards, which range from 10 to 30 percent. And this had to do really with the nature of the awards.

Mr. MOONEY. Okay. Thank you, Chairman Gensler. It seems the whistleblower changes could lead to more and more changes of rules, and attempts to change rules through simply making public statements. I worry that the Commission could set a precedent that public statements override established rulemaking, and that would cause our markets and investors to suffer.

Notice-and-comment rulemaking forces regulators to take their time, and listen to the public before finalizing regulations, and this comment period is important for getting rules right.

Chairman Gensler, I have heard you talk about the big, ambitious plans you have for your tenure at the SEC. I remind you that Congress makes the laws, not the agencies. It is not within your power to create new policy and avoid the notice and comment rule-making process.

Thank you, Madam Chairwoman, and I will yield back the balance of my time.

Mr. GENSLER. Yes. And I will say, I like notice-and-comment rulemaking. You hear from the public. The consultation is a constructive part of our Agency's work.

Mr. MOONEY. Okay. Thank you.

Chairwoman WATERS. Thank you.

The gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations, is now recognized for 5 minutes.

Mr. GREEN. Thank you very much, Madam Chairwoman.

And, Chairman Gensler, I thank you very much. I am greatly appreciative of what you have been able to accomplish.

I am especially gratified that you have supported the Whistleblower Protection Reform Act of 2021, something that our office has been able to sponsor and to work with the General Counsel over at the SEC to strengthen. It means a lot to do this, and it means a lot also to have the level of cooperation that we have received from you.

As you well know, and for the edification of others who might not know, this legislation expands upon what we did in the last Congress with the Whistleblower Protection Act, and that passed the full House with only 12 persons dissenting, 12 folks in opposition.

This Act revises the burden of proof, it authorizes compensatory damages for whistleblowers who are not fired but who suffer some other forms of retaliation, and it protects them. It protects whistleblowers who report orally rather than doing so in writing.

I think it is a significant piece of legislation. I am very grateful that Public Citizen has expressed its support for the legislation.

If you can, Mr. Gensler, given that we have legislation, what do you think this legislation will do in terms of being helpful to the extent that other legislation that we did not get through could not accomplish?

Mr. GENSLER. Congressman, I look forward to looking at the details of the legislation. But I think in the direction that you just outlined, the support we can give to whistleblowers so that they will come forward, is a hard thing to do. Say, you are working in-

side of a company, inside of an asset manager or others and say, "Something is going on here that is amiss."

And to come forward, to talk to an agency like the SEC, takes a fair bit of gumption. So, anything that we could do to help encourage individuals to do that, is a really important part of our oversight of markets.

We, of course, get other sources of leads. We see things in the media. We have a terrific staff of examiners and enforcement personnel and economists. But the whistleblower piece is an important piece of our overseeing the markets.

Mr. GREEN. Thank you. I concur with you totally. And I would add something in addition.

Knowing that whistleblowers are protected will also act as a deterrent within the corporate structure. I think that whistleblowers who have this added protection will come forward, but it is knowing that they can come forward with the added protection that I think will make a difference as well.

Any comments on just the deterrent effect?

Mr. GENSLER. I think it is an important deterrent effect. I remember when Senator Grassley was leading this back in the Dodd-Frank Act and working across the party lines.

I think having whistleblowers be part of our examination and enforcement regime and having a cop on the beat helps deter fraud and manipulation in our markets. It also helps companies, good faith actors, do their jobs better because it lowers uncertainty for investors.

Mr. GREEN. Thank you.

And finally, I am inviting and requesting my colleagues to please support this legislation. It is a means by which Congress can weigh in and have a significant impact in a very positive way.

I am grateful to you, Mr. Gensler, and I thank my colleagues who will support it, and I look forward to working it through the House.

Thank you, Madam Chairwoman, for your support as well. Thank you.

Chairwoman WATERS. Thank you very much.

The gentleman from Georgia, Mr. Loudermilk, is now recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Madam Chairwoman. Can you hear me now?

Chairwoman WATERS. Yes.

Mr. LOUDERMILK. Okay. Thank you. I had maybe the same thing that was happening to Mr. Hill. But thank you for this opportunity.

Chairman Gensler, when you testified before this committee in May, you and I discussed the Consolidated Audit Trail (CAT). And you assured me that most of the investors' personally identifiable information (PII) that was originally going to be collected in the CAT, including Social Security numbers and birth dates, will not be collected because the SEC was working on amending the CAT plan to remove that data.

However, it appears that those changes still haven't been finalized. And unless they are, the PII will be collected.

The question is, when will the SEC finish the rulemaking to remove most of the PII from CAT?

Mr. GENSLER. If I could follow up after the hearing and find out our exact dates, but I concur with you that removing that data from the CAT is important. I know that it is on our docket. I have met with the people in our Trading and Markets Division who are working on that a number of times since you and I last spoke. But I would have to follow up with an update as to which month we think we will finalize that.

Mr. LOUDERMILK. I would appreciate it if you could follow up with us because, as you can see and as we all can see, cybersecurity is a critical issue right now with all that is going on, and it is just going to continue to get worse. And I think that we definitely have to protect the PII of investors. So, if you will get back with us, I would appreciate it.

On another note, last year the SEC finalized amendments to its rules regarding proxy voting and whistleblowers. However, soon after you became the SEC Chair, it appears to me you unilaterally decided that the SEC was not going to enforce those rules. Those decisions were announced via a Commission statement and not a rulemaking.

Two of the other Commissioners noted that the SEC has a reputation as a steady regulatory machine because it has generally avoided [inaudible] Rules and is not [inaudible] Rulemaking when there is no new [inaudible] To justify reopening them.

It appears that there may be some picking and choosing of which rules to enforce and which rules to ignore, based on which ones you like and which ones you don't like. Is this the direction that you are going? Is this the SEC Chair's job, to selectively enforce the rules based on personal preference? How do you justify that?

Mr. GENSLER. I think that at the heart of shareholder democracy it was really an important feature that many fund managers get advice from proxy advisers, and as you rightly said, there was a rule that was finalized last year.

What I asked staff to do was to take a look at that, to take a close look at that, and make any recommendations—again, through the five Commissioners, through notice and comment—about whether there should be any changes to that.

Again, through the notice-and-comment period, and that is what I announced earlier this year, that I asked them to do.

Mr. LOUDERMILK. Okay. Finally, I would like to note that President Obama's SEC Chair, Mary Jo White, opposed hijacking securities laws to push social and cultural issues. But based on the SEC's agenda, which includes issues like climate change and diversity, it appears you intend to do exactly that.

You often say that investors want ESG disclosures, but in 2020, shareholders made 140 ESG proposals, and all but 6 of them failed, and in the average vote, only 30 percent were in favor.

Only a relatively small number of activist investors want mandatory ESG disclosures. I hope you will avoid using securities disclosures to push a left-wing political agenda and recognize that all companies are already required to disclose all material information to investors.

And with that, Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much.

The gentlewoman from Massachusetts, Ms. Pressley, who is also the Vice Chair of our Subcommittee on Consumer Protection and Financial Institutions, is now recognized for 5 minutes.

Ms. PRESSLEY. Thank you, Madam Chairwoman, for convening this hearing.

Since the 2008 financial crisis, the private equity industry has exploded, tripling the amount they manage from \$1.5 trillion to \$4.5 trillion.

Now, while banks are subject to certain SEC reporting requirements on their private assets, private equity firms do not have to provide that same level of transparency, and are not subject to the same regulatory scrutiny, and they benefit from that.

Chair Gensler, what tools is the SEC using to better monitor the activities that a lot of these nonbanks, like private equity firms and hedge funds, are engaging in, considering they have great impacts on the economy and consumer-facing business?

Mr. GENSLER. Thank you, Representative Pressley. It's good to see you again, by the way.

But in terms of private equity, you are right, our capital markets have the public markets, have the private markets, and then the intersection of the two.

And I have asked staff to ensure, the best we can, that the arrangements between the general partners, the people managing this money, the investment managers, and their investors, often their limited partners, that those arrangements have the appropriate transparency and that the investment managers are living up to their responsibilities, their duties, their contractual duties, but also their duties under the law in terms of representing those investors. I think that is really important.

I have also asked staff whether we should update some of the data that we collect, and it might not have been the center of your question, but on Form PF, or on private fund, in that regard.

Ms. PRESSLEY. Yes, that actually is the center of my question, which is, would you be expanding reporting requirements? That sounds like a, "Yes." And if that is true, could you speak to the timeline? How soon do you plan to take those steps?

Mr. GENSLER. In terms of timelines, again, I would need to come back to you because I sometimes can't remember every month and everything. But I have been meeting—last week, I had some more meetings with staff on enhancements, potential enhancements to what we Form PF, or private fund, and also a separate project in terms of the responsibilities and obligations between the investment manager, GP, and the LP. But I would have to come back and say when staff will serve up recommendations to our Commission.

Ms. PRESSLEY. That is fine, and we look further to speaking further offline, certainly just looking for bold and necessary action here as soon as possible.

The affordable housing and eviction crises are racial and economic justice crises, and stable housing has been a matter of life or death for millions of people vulnerable to eviction during this pandemic. And in 93 percent of the counties in the U.S., including in the district I represent, the Massachusetts 7th, a full-time minimum wage worker cannot afford a one-bedroom rental home.

Nationwide, over 40 percent of Black and Brown households spend more than a third of their income on rent. In Massachusetts, a minimum wage worker must work 87 hours a week to afford a one-bedroom rental home.

Meanwhile, private equity CEOs are living lavishly, and pocketing billions of dollars in profit off of the backs of these hard-working families struggling to keep a roof over their heads.

It has been well-documented how private equity firms were protected from the 2008 economic crisis. After millions of people lost their homes to foreclosure, private equity firms bought residential properties at a deep discount, and later raised rents, gouging tenants with fees, skimping on maintenance, and using aggressive collections and eviction strategies.

Now, private equity landlords control at least one million apartment units and at least 250,000 single-family homes. And these aren't high-end homes. These are the entry-level homes in once-affordable housing units that low-income families, disproportionately Black and Brown families, occupy.

This is why families can't afford to buy homes. When the economy is down, private equity buys up the neighborhood, guts it, and rents it for twice the price.

So, we have reason to be concerned that the private equity industry will seek to profit off of the displacement of families during a global pandemic, no less. For example, Blackstone, the world's largest private equity firm, has previously been called out by the United Nations for inflating rent, aggressively pursuing evictions, and fueling the global housing crisis.

Chair Gensler, it doesn't have to be like this. Housing is a human right. I know our chairwoman agrees. I implore you to take action to help address these egregious behaviors, and I look forward to following up with you offline.

Thank you. And I yield back.

Chairwoman WATERS. Thank you so very much, Ms. Pressley.

The gentleman from Ohio, Mr. Davidson, is now recognized for 5 minutes.

Mr. DAVIDSON. Thank you, Madam Chairwoman, and thank you, Ranking Member McHenry.

And Chairman Gensler, thank you for your time here today.

In 2018, there was a New York Times article that discussed your views on blockchain and various cryptocurrencies. One of the cryptocurrencies discussed in the article was Ethereum. In the article, you said that Ether could have problems with securities laws because some of the first tokens were sold by the Ethereum Foundation before the network was actually functional. You went on to say that Ethereum could get off the hook from securities laws due to the fact that it developed into a decentralized network.

You have repeatedly said that you believe initial coin offering tokens are securities. But right here, it sounds like you are acknowledging that Ether transitioned from what would have been a security into a commodity once the network was adequately decentralized.

Can you clarify when a token is sufficiently decentralized to no longer be a security, in your view?

Mr. GENSLER. I thank you for that, and for digging back to an article from 3 years ago. But I was honored to study and research these issues at MIT. And what I was commenting on then was a process that the SEC was going forward on, and I think the then-head of Corporation Finance was talking about in that timeframe.

So, without going into any one token, what I think the core test is, and it is the test the Supreme Court has taken up numerous times with a broad brush, is that you are raising money from others and the investing public, and anticipating profits based upon the efforts in some collective group of individuals.

That central test is called the Howey Test. There are other broad brushes with regard to this as well, as to when something is a note, called the Reves Test, that Thurgood Marshall wrote a few decades ago.

Fundamentally, the SEC is here to help protect the public from fraud, and that is why Congress painted with a broad brush.

Mr. DAVIDSON. Yes. Thanks for the clarification. Unfortunately, Congress didn't create the Howey Test; the courts did. And the same with the Reves Test. And, frankly, we are dependent on this patchwork of regulation by enforcement. Obviously, there are people who feel that a particular token, like Ether, is treated differently than one like XRP, for example, a matter that is before you right now, because of the same thing. Is it centralized, or is it decentralized? Who has control?

And I think that really gets to the issue. Congress really should clarify. We have had a bipartisan legislation called the Token Taxonomy Act drafted since 2018, and we can't get a hearing on it. It would provide a bright-line test that would apply a 1950s case law, the Howey Test, to modern digital assets and provide some of that clarity.

But could you, generically speaking, talk about the shortcomings of enforcement actions or even threatened enforcement actions versus the need for clarity, maybe a rulemaking process that would establish a bright line?

Because, really, what you referred to was, well, come talk to us in a one-on-one kind of Third World way, where every individual firm cuts their own deals.

What the market really needs is clarity. Wouldn't that be better than threatened enforcement?

Mr. GENSLER. I actually think that the securities laws are pretty clear on this, sir, and I think that firms should just come in and register.

But what has happened over the last 4 or 5 years is they have either chosen not to or they have stood up in Singapore or Malta or Hong Kong or other countries and offered their services indirectly through virtual private networks. Not all of them; some of them are here in the U.S. as well.

And I think that our securities laws were written for a reason: to protect the public, the investing public.

Mr. DAVIDSON. Yes, I think you are right, we should protect the public, but we need to do so with clarity. And frankly, we should do it in a way that doesn't destroy the market. You are talking about fintech being the leading innovation.

America has led in market after market after market in the field of technology, from the agricultural revolution, to the industrial revolution, and on up through the internet age. Why would we want to destroy the fintech revolution and push it outside the United States when we can foster it?

I refer to your threatened enforcement action on yield products, for example. We should go through a rulemaking process—or, frankly, Congress should act—which is why I am drafting a bill that should be submitted shortly to clarify yield products and how they should be protected.

The last thing I would say is, certainly not all stablecoins should be considered securities, and I think you have referenced that. But I look forward to working with you and your office to provide clarity for our markets.

And I yield back.

Chairwoman WATERS. Thank you.

The gentlewoman from North Carolina, Ms. Adams, is now recognized for 5 minutes.

Ms. ADAMS. Thank you, Madam Chairwoman.

And thank you, Mr. Chairman, for being here.

As you may know, I recently introduced the Registration Index-Linked Annuities Act (RILAA). In recent years, there has been an increase in demand for RILAAs, and these products, which provide the benefits of market exposure while simultaneously offering protections against extreme downward market volatility.

I have heard from issuers of RILAAs, including companies located in my district here in North Carolina, that the lack of a tailored form of registering these products has complicated their ability to market these products effectively.

The Consumer Federation of America, the American Council of Life Insurers, and others have endorsed the bill, and it has strong bipartisan support from members of the committee. I wanted to just flag this for you, like Senator Smith of Minnesota did in your last hearing. But I look forward to working with you to advance this legislation.

I would be happy to hear any thoughts that you have on this matter.

Mr. GENSLER. No, I thank you. I thank Senator Smith for flagging it in the last hearing as well. And I think that index-linked annuities have come under the securities laws for quite some time, but what you are flagging is the forms that they fill out, could we find a way to basically change the forms they fill out at the SEC?

Since the Senate hearing, I have actually asked the staff to consider some of the things that you and the Senator have raised and to make some suggestions.

Ms. ADAMS. Wonderful. Thank you very much.

This committee has been advocating for the creation of Offices of Minority and Women Inclusion (OMWI) across financial regulators. These offices are to ensure that internal staffing and procurement policies are inclusive and encourage all regulated entities to follow suit.

What are you and the OMWI Office doing to increase participation?

Mr. GENSLER. The OMWI Office, headed by Pam Gibbs, is a terrific ally internally in terms of trying to promote more minority and women inclusion in our hiring, and in our promoting, in our senior ranks. I think, while we have made some progress at the SEC, there is still a lot more progress to make in this regard as an agency.

We are also, beyond that, looking to see what we can do to, as we talked about earlier, in terms of various questions that we put out to the industry as to what they are doing in the same regard.

Ms. ADAMS. Okay. Have you considered making these assessments mandatory? Or do you have any other inducement to encourage greater participation?

Mr. GENSLER. I think it would be good to have greater participation. I have asked counsel and so forth.

I think while we are moving forward, and I hope that staff will make recommendations, and that my fellow Commissioners will support some notice and comment on disclosures around diversity, disclosures around the board and the workforce diversity, I think until we were to do that, it would really be up to Congress to have participation, as you said, mandatory participation in some of these current industry surveys.

Ms. ADAMS. Okay. Great. Thank you very much.

Madam Chairwoman, I am going to yield back.

Chairwoman WATERS. The gentleman from North Carolina, Mr. Budd, is now recognized for 5 minutes.

Mr. BUDD. Thank you, Madam Chairwoman.

And thank you, Chairman Gensler.

China has been on a warpath against cryptocurrency, it seems, since 2013. And we have seen them implement bans on mining, initial coin offerings, cryptocurrency exchanges, and their most recent move, an outright ban on cryptocurrencies themselves.

Chairman, do you support what China has done? And is the SEC planning on implementing similar bans?

Mr. GENSLER. I am familiar with a number of the things that you have mentioned in terms of the People's Republic of China. I think our approach is really quite different, and it is a matter of, how do we get this field within the investor and consumer protection that we have, and also, working with bank regulators and others? How do we ensure that the Treasury Department has it within anti-money laundering, the tax compliance, and of course, the financial stability issues that stablecoins could raise as well?

Mr. BUDD. But no bans that you are interested in implementing via the SEC as China has done really to funnel everyone through their own digital currency?

Mr. GENSLER. No, that would be up to Congress. We are really working with the authorities you have given us, and I have said this. I think that many of these tokens—and it is based on the facts and circumstances—but many of these tokens do meet the test of being an investment contract or a note or some other form of security, that we bring them within the investor protection remit of the SEC.

Mr. BUDD. Thank you.

Let's talk about innovation for a moment, which has made the U.S. markets the envy of the entire world, the nature of the innovation that we have here.

In referring back to the Senate Banking hearing that you were in, I think you stated before you were in your current role, you said, "Innovation is what supports access, economic activity, and gives so many of us better opportunities in life."

As the Commission continues to review proposed changes, will you commit to balance any changes with the impact it will have on everyday investors?

Mr. GENSLER. I think that is at the core of our mission, our three-part mission, but also to balance the economics.

Innovation, as I said then and will say now, does help increase our economy, increase access to capital. It is why I studied it. I was fascinated to study this at MIT, the intersection of finance and technology.

But I think that new technologies rarely last long if they try to stay outside of whatever public policy goals that a society lays out. Investor protection has worked for us for 90 years, and I think it is an important piece of whether cryptocurrency is going to survive or not and meet its potential, whatever that potential might be.

Mr. BUDD. Thank you.

You said multiple times that the SEC has a great deal of clarity on what exactly is a security. Given the SEC's approach to using enforcement as a way to regulate, you stated before the Agriculture Committee, in 2018, "The SEC will need to decide if they might issue rules and interpretations specific to the crypto space."

Now that you are leading the SEC, will you describe areas in which you plan to provide additional guidance and even enforcement?

Mr. GENSLER. I want to say that I think the enforcement actions, the 6 or 7 dozen enforcement actions over 4 or 5 years that the SEC has brought in this space, by my predecessor, and that we continue to do, help to protect the public.

In terms of working with exchanges, platforms that come in to try to register, it is really to look at our rule set to ensure that we achieve the core of our rule set. But if there are some pieces of it that don't fit, I use things like transfer agents and others because they are easier for some to understand, that might not fit particularly with these new digital investment contracts.

Mr. BUDD. Okay. I just have a few seconds left.

Madam Chairwoman, I yield back.

Thank you, Chairman Gensler.

Chairwoman WATERS. Thank you very much.

The gentleman from California, Mr. Vargas, is recognized for 5 minutes.

Mr. VARGAS. Thank you very much, Madam Chairwoman. I thank you, and I thank the ranking member for this committee hearing, and I especially thank our witness today, Chairman Gensler.

Chairman Gensler, I believe public companies regularly fail in the potential cost of climate change and environmental exposure. Many companies, many public companies, fail to disclose what I believe is key material information surrounding corporate governance

policies, such as employee and management diversity or the lack thereof.

In response, the House passed H.R. 1187, the Corporate Governance Improvement and Investor Protection Act. The bill included my ESG Disclosure Simplification Act of 2021, which requires public companies to annually disclose to shareholders certain environmental, social, and governance metrics and their connection to their long-term business strategy.

Chairman Gensler, on March 4th, the SEC announced the creation of the Climate and ESG Task Force in the Division of Enforcement. The task force focuses on developing initiatives to, “proactively identify ESG-related misconduct,” and, “identify any material gaps or misstatements in issuers’ disclosure of climate risks under existing rules.”

Chairman Gensler, could you provide the committee with an update on the task force findings and the scope of their investigations?

And, additionally, do you believe that all public companies should be required to disclose relevant ESG concerns? I know that you talked a little bit about big and small companies, but could you elaborate a little more on that?

Mr. GENSLER. Thank you.

I do think that investors have increasingly, over the years, asked for greater disclosures on climate risk and on the workforce. We have a separate project which might not fit into your question on cyber.

The last time that the SEC put out guidance on this was in 2010, and the task force that was stood up in March of this year was to ensure that investors were getting the benefit, not just of that 11-year-old guidance, but that companies were following their responsibilities under this disclosure regime.

But I think that really now is the time to put something out to the public. The public can weigh in. How can we as the SEC play a role to bring consistency, comparability, and, yes, decision-useful information around the physical and transition risks in climate that many of these companies are facing, and, yes, around the workforce, including the diversity of that workforce?

I think investors are asking for it, but, again, we will find out when we put things out for notice and comment. We will see what people say.

Mr. VARGAS. You say that investors are asking for it, and even some companies are already providing it. It is a different level, different things. But aren’t they already doing that, some of these companies?

Mr. GENSLER. Yes. I thank you for saying that, because you are absolutely right. Of the top 500 companies by market cap, I think 80 to 85 percent are right now putting out climate risk disclosure on a voluntary basis.

It helps those companies, if we bring some consistency and comparability to it. Imagine if companies, 400 or 500 of the leading companies in the U.S., were just putting out disclosures about their financials, but they were all deciding different ways to report their financials or a different way to report their executive compensation.

We have a role, and Congress gave us a role to try to standardize that and bring some comparability. And it helps the companies as well as the investors to bring some standardization.

Mr. VARGAS. I agree, and I think that is why the investors are asking for it, and I think that is why a lot of the large companies are giving it.

I do want to ask with the last minute that I have, I know that a number of my colleagues are really hot on this crypto stuff.

I have to tell you, people ask me all the time, "Juan, what is crypto? And how does that help the dollar? How does that help the United States? How does that help anybody other than traffickers, narcotraffickers, terrorists, or people trying to make a quick buck? How does it help us to have this cryptocurrency?"

I understand if the United States had a digital currency, I could see how it could help the dollar. But how does that help us, all of these cryptocurrencies?

Mr. GENSLER. We have, around the globe, 180 fiat currencies, meaning 180 different countries have one. But each country has one. We have the U.S. dollar, and it happens to be the leading currency around the globe.

It is unlikely that 5,000 or 6,000 private forms of currency are going to persist. Economic history tells us that is unlikely.

And a lot of these are not really currencies. They are not being used to buy a cup of coffee at Starbucks. What they are, most of them, are investment vehicles, ways to raise money for entrepreneurs, and thus, they should come in, and they should be within the securities laws.

The handful that might be competing with gold or silver as a digital speculative store of value, as gold is a speculative store value over the centuries. But not many of them. Most of them are investment vehicles.

Mr. VARGAS. My time has expired.

Chairwoman WATERS. The gentleman's time has expired.

The gentleman from Tennessee, Mr. Kustoff, is now recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Madam Chairwoman. Thank you for calling today's hearing.

And thank you, Mr. Chairman, for appearing today.

I read your column that you wrote several weeks ago, "Chinese Firms Need to Open Their Books." I am just going to ask you very broadly, what exactly are you saying? Of the 270 companies, you said they need to be prohibited from trading here by 2024. What are you seeing, or what are you not seeing with those companies?

Mr. GENSLER. There was a basic bargain entered into on a bipartisan basis about 20 years ago, the Sarbanes-Oxley Act, that President Bush signed into law. And it said that to instill greater trust in our markets after the Enron and WorldCom fiascoes, and that was about accounting fraud in that case, that companies' auditors needed to open up their books and records to a new entity, the Public Company Accounting Oversight Board (PCAOB), and we at the SEC oversee the PCAOB.

Nearly 20 years later, 50-plus jurisdictions have allowed that to happen, from Europe, from Asia, from Africa, from South America,

and from North America, but two jurisdictions currently are not: China and Hong Kong.

Congress came back together last December and said, let's set a clock, a 3-year clock, for the PCAOB to see those records.

In essence, there are three or four key things. Number one, the PCAOB has to select which companies they are inspecting. Number two, they have to see the work papers and see those work papers of the auditors not redacted, not selected, but they actually need to be able to talk to the auditors to basically instill greater trust in the financials, in this case of these China-related issuers.

Mr. KUSTOFF. As a follow-up, you did mention a specific number, 270 companies, by 2024. Who are some of those companies?

Mr. GENSLER. These are the companies that I call China-related companies, because many are actually incorporated in the Cayman Islands and don't actually own anything directly related to these companies, but many are the large internet service providers in China or internet companies similar to our large internet companies here that provide online retailing, online services, but there are also some insurance companies, and some oil and gas companies that are related to China as well.

Mr. KUSTOFF. Let me, if I can, ask the same question a different way. You did identify a specific number, 270—

Mr. GENSLER. Oh. May I say that is just the number of companies right now that are China-related, based upon statistics that we can see from outside services. NASDAQ and others just list a whole list of companies, and I could certainly follow up and give you that. But we as an Agency, the SEC, actually have a congressional mandate that, each year in this 3-year clock that is ticking, we would publicly identify specific companies. In the early part of 2022, if China and Hong Kong are not yet compliant, then we would identify the specific names of companies, and then do this a year later, and a year after that.

Mr. KUSTOFF. Do you anticipate that number could grow?

Mr. GENSLER. It could grow if there are more companies from China or they are affiliated companies in the Cayman Islands because many of these are actually Cayman Island issuers that enter in arrangements called variable interest entity (VIE) arrangements with China's companies. So, it could grow, but we have actually—we at the SEC put a pause on that until we could enhance the disclosures around these so-called VIE structures.

Mr. KUSTOFF. Lastly, Chair Gensler, in my remaining time, a couple of months ago you stated before the Investor Advisory Committee that you wanted your Commission staff to work on new disclosure requirements for Special Purpose Acquisition Companies (SPACs). Have you gotten those recommendations yet? And, if not, when do you expect to see those recommendations?

Mr. GENSLER. I have gotten them in terms of preliminary recommendations, but not a full rule that I can put in front of my fellow Commissioners. But I think that we can try to address some of the disclosure issues around the SPACs that the retail public—really, these are very costly vehicles for companies to raise money and for the retail investing public. And I think we can bring greater transparency and address some of the conflicts, but I could fol-

low up as to which month, I think, that will be in front of our Commission.

Chairwoman WATERS. Thank you so much.

The gentleman from New York, Mr. Torres, is now recognized for 5 minutes.

Mr. TORRES. Thank you, Madam Chairwoman.

It is a pleasure to see you, Chair Gensler. I have a question about the neither-admit-nor-deny policy. If you, as a public regulator, find that a company has engaged in wrongdoing and then take enforcement action accordingly, is it fair for the SEC to allow a company found to have engaged in wrongdoing, is that fair and transparent and accountable?

Mr. GENSLER. I think you raise a really important point for agencies like our civil law enforcement agencies that, with a group of limited resources, no matter what Congress gives us, it is always a limited set of resources on how to best protect the marketplace, and that is why I think it is so important to have a remarkable Enforcement Division. I have said this, that we hold, not only companies accountable but individuals accountable; that we have a full rendition of the facts so that the public understands why we might enter into a settlement—I think what you have raised is usually in the context of settlements; and that we even use all the authorities in terms of individual bars; and where appropriate on occasion to—

Mr. TORRES. Mr. Chairman, if I could just intervene, I am asking if it is fair? Before we get to the resource question, do you think that is fair? Do you think it is fair to have a policy of settling cases without requiring admissions of wrongdoing? Because I believe, and I suspect the majority of Americans [inaudible] engaging in wrongdoing? Because there are reputational consequences that come from admissions of wrongdoing; if you defrauded your customers, I have a right to know. Because if you allow them to settle and neither admit nor deny, then a company can easily say, “I never did anything wrong. I never admitted to doing anything wrong; I just simply paid off the SEC to go away.”

Mr. GENSLER. I think you will find that I am largely in agreement. It is the hard challenges of an agency like ours and other agencies. We are not the only Federal regulatory agency that is faced with this challenges of resources that what is really important is to have a real, robust rendition of the facts, to use the authorities around individual bars as your right to go beyond fines because fines, all too often, are just viewed as a cost of doing business.

Mr. TORRES. Are you just—I want to move on to a new topic, but are you saying that [inaudible].

Mr. GENSLER. I'm sorry. You are cutting out.

Mr. TORRES. Do you think that resource constraints make it impossible to rethink the policy of settling cases without requiring admissions of wrongdoing?

Mr. GENSLER. I think I heard most of what you said. I apologize because you were cutting out, but I do think that what is really critical is to use the resources that Congress gives us as best we can to lean in to ensure that we have a full rendition of the facts of the case; use our industry bars; and, yes, from time to time, as

you said, to consider whether to include that in a settlement. And, as you know, we also take many cases to litigation and into the courts where that is not the case, where in the courts, you find different things. The court decides, and opinions are written.

Chairwoman WATERS. Mr. Gensler, I don't know whether Mr. Torres is still on the platform. It looks as if he dropped off.

Mr. Torres, can you hear me? I think something has happened. I don't know if it is a technology problem, but—

Mr. TORRES. Hello?

Chairwoman WATERS. I think he is coming back now.

Mr. Torres, you may continue.

Mr. TORRES. Chair Gensler, are you suggesting that resource constraints make it impossible to settle cases without requiring admissions of wrongdoing? I just want to be clear about your position.

Mr. GENSLER. I think that, as we have had in this lively discussion, there are challenges and tradeoffs, and it is part of why sometimes we take cases directly into the courts. What you are highlighting, and I think we have a shared vision here, is to use all of the tools that we have in our tool kit to ensure that market participants stay on the right side of the law. And that is at times taking things into the courts and litigating them fully. Occasionally, that is also settlements. It has been ensuring when we do settlements, if there is a full rendition of the facts, that we also use industry bars, that we, when appropriate, also have very serious undertakings by those—

Mr. TORRES. Mr. Gensler, I see my time is about to expire. I just want to quickly ask you about stablecoins. Do you consider stablecoins a systemic risk, because obviously, the nature of stablecoins will determine the nature of regulation? What is your conception of stablecoins? Is it securities or a systemic risk?

Mr. GENSLER. I would say this: We already have—oh, the gavel is coming down.

Mr. TORRES. Is it a systemic risk? Yes or no?

Mr. GENSLER. I think the \$125 billion of stablecoins we have right now are like the poker chips at a casino, and I think they create risk in the system that we have digital lending, crypto lending, crypto trading that, yes, I do think that if this continues to grow and it has grown about tenfold in the last year, it can present those systemic risks.

Chairwoman WATERS. Thank you. The gentleman's time has expired.

The gentleman from Ohio, Mr. Gonzalez, is now recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Chairman Gensler, for your time today. I also want to thank you for our time last week. I thought it was a very good conversation. As I mentioned in our call, I am extremely excited about the opportunities from emerging blockchain technology for our economy and opening up finance opportunities to the unbanked and underbanked.

Additionally, when I look at those who have done the best financialing in the crypto space, it seems to be a much more diverse set of players, which is completely unlike the traditional finance world, that is almost exclusively dominated by those who happen to have attended the best schools and have the right pedi-

grees. This tells me that crypto is enabling wealth creation opportunities in a way that the traditional finance world simply has not been able to accomplish in many respects.

Recently, we have seen a boom in DeFi products that give individuals the power to lend, borrow, and earn interest through the Ethereum platform, and somewhat on Solana, that far exceed the zero percent rates that U.S. Treasuries provide. I have been speaking with multiple companies in the space and the common theme in these discussions is that they want to come in and describe their product to the SEC. However, they are concerned that these meetings could lead to a potential enforcement action. They also see some of the comments, similar to the ones you just made, about many of these products, in particular, stablecoins, being the poker chip at a casino as unnecessarily demeaning and suggesting there is a presumption of guilt on the part of the SEC. And so, this sort of friendly, open-door conversation is not something that they believe they are experiencing.

I guess my first question—well, first, I want to start on stablecoins. It seems to me that when you are thinking about stablecoins and whether they are a risk or not, a lot of that falls back on the quality of the reserves and what ultimately backs up the stablecoin should be determinative in whether it is a true stablecoin or it is a junk coin.

Would you disagree with that characterization? And, if so, please explain why, if we agreed on what constitutes a high-quality set of reserves, why that would, in effect, somehow necessitate calling them a poker chip at a casino?

Mr. GENSLER. Let me just comment on that last point. We have regulations in many States of the land—Nevada started, and New Jersey, but my home State of Maryland had to take this up some 2 decades ago regulating casinos, and it ensured for certain safety and protection for the public. I think that we found our way through that set of public policy issues, and we can find our way through this as well.

Mr. GONZALEZ OF OHIO. If I could really quickly on the casino route—really quickly, Mr. Chairman, there is a key difference between a casino and a DeFi product. In a casino, you are guaranteed to lose 100 percent of the time. If you play long enough, you will lose. The odds are against you, unless you are cheating. That is not true in crypto. It is not true in blockchain technology. But I will let you proceed.

Mr. GENSLER. In terms of a number of these platforms, you have tempted me in here, a number of these platforms are saying, “Come hither, and we will give you a return on your crypto if you leave it with us, and we will give you staking returns or lending returns.” And often they are, as you said, above what you can get in a money market fund or what you can get with investment advisers.

Within a transparent way, how are people, sort of, advertising 4 percent returns, 7 percent returns, sometimes up to 21 percent returns on these crypto platforms? I think that is what we are trying to do is to ensure that the public is not defrauded and what stands behind those claims. In terms of stablecoins, I do concur with you that there are different types of coins. Wrapping something com-

puter graphically around fiat money could be different. It could be directly around deposits at a bank, or, on the other end of the spectrum, it could look a lot like a money market fund because it could be like our money market funds around Treasuries, commercial paper, certificates of deposit, and so forth.

So, it really depends on what the underlying assets are, but I do think, as you have just said, that there is a way to ensure the reserves are tightly and appropriately tied to the banking system, but that might raise other issues because we already have digital money in this country. We have for decades had digital money. It is called digital bank deposits. So now, the question is, what is stablecoins giving you more if they are not just giving you a way to avert tax collection, tax compliance, and anti-money laundering? And I do think a lot of these stablecoins are—excuse me for saying it—they grew up over the last 8 years inside of trading platforms around the globe to avert anti-money laundering laws and tax compliance.

Mr. GONZALEZ OF OHIO. I see my time is up.

With that, I yield back.

Chairwoman WATERS. Thank you.

The gentlewoman from Pennsylvania, Ms. Dean, is now recognized for 5 minutes.

Ms. DEAN. Thank you, Madam Chairwoman.

And, Chair Gensler, it is a pleasure to have you here before us. Thanks for providing testimony to the committee to discuss the priorities, the mission, and the needs of SEC. So, to take a bridge from that conversation around resources and your budget requests, I wanted to give you an opportunity to talk about your budget requests. SEC is requesting a little more than \$2 billion in appropriations for Fiscal Year 2023, a little more than an 8 percent increase compared to 2022. In fact, the final statement in your written testimony says, “As more Americans are accessing the capital markets, we need to be sure that the Commission has the resources to protect them.”

I agree with you completely. How we budget reveals our priorities. With the amount of funds in your budget request, will that offset the staffing level decreases that the SEC has suffered since 2016, which I believe your Agency has reported at about a 4 percent decrease, and what key areas of staffing are needed with this budget request?

And I guess one final piece of that, I believe it is a deficit neutral budgeting statement in terms of SEC budgeting, if you could address that.

Mr. GENSLER. Thank you for that. Yes, to go in reverse order, we are, because under congressional authorities, the SEC sets an annual fee on various securities transactions. And so, from the point of view of the U.S. taxpayer, it is paid for, in essence, by the market itself and the market transactions.

In terms of levels of staffing, we did work with the Office of Management and Budget (OMB) on that 2023 request, but it doesn't quite get—we had shrunk several hundred people or 200-plus people since 2016, and this gets us just below where we were in 2016. I would have preferred to have been asked to take on an agency that had grown 4 or 5 percent and not shrunk 4 or 5 percent, and

this doesn't quite get us above where we were 5 years ago. And this is a market that is continuing to grow.

The last thing I would say is technology. We spend, give or take, \$350 million a year on technology at the SEC, which is probably what some of the big banks spend in a couple of weeks, if you just take the numbers. That is one systemically important bank or something like that. Certainly, most of them spend more than that in a month, and so it is just the nature of congressional appropriations. We are where we are. We have asked for a bit more, but it doesn't quite get us to where we would like to be.

Ms. DEAN. Can you speak to the focus at the SEC as you, I hope, staff up a focus on diversity across-the-board at all levels of the SEC?

Mr. GENSLER. It is a really important focus in terms of recruiting people, but also promoting into the senior ranks. I have tried to do my best with the handful of people that we have hired, whether in my front office or as Division Directors, but also to work with our Office of Minority and Women Inclusion, and work with our senior officers every time that we have a possibility of promotion, to really look across the Agency. We are advertising externally and internally, and I think that is important to allow people to have an opportunity for those senior roles as well.

Ms. DEAN. That is terrific. And, finally, we have spoken a lot about the mission of investor protection. With the notion and the spirit of the ultimate investor protection as we see as inching toward this potential catastrophe in reaching the debt ceiling, do you recommend a lifting or elimination of the debt ceiling?

Mr. GENSLER. Of course, I have to leave some of that to Congress and the Executive Branch, but I would say this, as the chairwoman asked me earlier in this hearing, I think as we get within a couple of days—if, I should say, and hopefully we don't—but if we get to a couple of days before that fateful October 18th—my God, it is my twin brother's and my birthday. What a fateful October 18th that would be.

Ms. DEAN. Oh, dear.

Mr. GENSLER. But as we get closer to that, I think we will start to see fraying in the marketplace, and there are great uncertainties if we actually defaulted on our debt, terrific uncertainties because Treasuries are the base upon which the rest of our capital markets stand. It is like saying, "Let's test the foundation of a house and let's make sure the foundation of the house defaults, the rest of the house is going to have problems."

Ms. DEAN. I wish you and your brother a happy birthday free of this burden, and it is irresponsible that any Member of Congress would want to walk us toward that brink.

And I yield back.

Chairwoman WATERS. Thank you very much. The gentlewoman's time has expired.

The gentleman from Tennessee, Mr. Rose, is now recognized for 5 minutes.

Mr. ROSE. Thank you, Madam Chairwoman and Ranking Member McHenry, and thank you, Chair Gensler, for your testimony and participation in today's hearing. I want to welcome you, again, to the committee and to, once again, remind you that historically,

the SEC has administered the Federal securities laws in a bipartisan fashion, and it is my hope that you will continue that tradition, as I believe our securities laws are not where they should be, in holding debates about climate change or things like racial inequality.

Obviously, as we reviewed market events in January, we restarted the conversation regarding payment for order flow. Now, I am not necessarily in favor of banning payment for order flow like the legislation that my Democratic colleagues have proposed, and that you have said is, “on the table,” especially without the proper due diligence of studying its benefits and costs. I know we have talked about payment for order flow a lot in this hearing, but I feel like we haven’t gotten a lot of answers.

Chairman Gensler, in the previous hearing, you agreed with me that transparency is key and said that your staff would be examining payment for order flow. That was in May. In your testimony, and throughout this hearing, you have said that you have asked for staff recommendations over the last 5 months. How far have they gotten in that examination, what were their findings, and when can we expect a report from you and the SEC on those findings?

Mr. GENSLER. I thank you for that. If I can separate out in terms of the January events, the staff of the Trading and Market Division and the Division of Economic Risk Analysis have put together a report, and shared it with the five Commissioners, and through that Commission discussion, I would anticipate we will have that report out shortly. Again, there are five of us, so there is a little bit of moving around.

In terms of the broader public policy issues—because that is just a report—I still share the view, that this is driven by economics, what is best to make our markets most efficient and whether it is, as you mentioned, payment for order flow or other parts of the stock market, what is critical, I think, are a couple of principles.

One is order competition, having my order compete with yours. And most people don’t realize, if you go to a trading app or on your computer and you put a market order in, it is not likely—in fact, it is highly unlikely that it will go to the New York Stock Exchange or NASDAQ or a LIT stock exchange. It is being bought by an internalizer and a handful of internalizers. So, we are really looking at, is that the best way to instill competition in this market and efficiency and to address some of the inherent conflicts that can be in this system?

Mr. ROSE. In a hearing earlier this year, I asked one of our witnesses what reforms he thought the SEC could implement with respect to payment for order flow to increase transparency for retail investors, and he suggested more granular 606 reports, specifically doing more to provide better public transparency of best execution.

Is your staff looking into additional changes to these reports? And, if so, what changes?

Mr. GENSLER. I will use terms that I have used earlier. That is on the table as well, sir, but I think that the question is whether disclosure alone, by enhancing the disclosure around payment for order flow, really will address it. The United Kingdom, Canada, and Australia all have banned payment for order flow. I know we have different markets, different systems. We even have letters

that we have gotten over the years dating back over the last 20 years articulating why it is not good for our system.

So, I asked staff to consider that but also to consider it only in the context of the entire market structure in terms of the exchanges and what they are paying on what is called, "rebates." How do we look at what is called the National Best Bid and Offer," because that is often what is used to measure price improvement. Is it the right measuring stick or measuring rod to look at?

Mr. ROSE. I see my time is short. In a challenging global economy, the strength of our capital markets is vital to long-term economic growth, yet regulatory burdens and increasing amounts of red tape prevents small business from thriving and stifles American innovation. The advances we have seen over the past decade in technology have improved the way Americans and our businesses perform financial activities. Due to these investments, we are seeing more investors who have historically been left out, now active in the markets. We should not stand in their way.

With that, Madam Chairwoman, I yield back.

Thank you, Chairman Gensler.

Chairwoman WATERS. Thank you very much.

The gentlewoman from New York, Ms. Ocasio-Cortez, is now recognized for 5 minutes.

Ms. OCASIO-CORTEZ. Thank you, Madam Chairwoman, for hosting this hearing.

And thank you, Chair Gensler, for joining us today.

I want to take a few minutes to discuss stock buybacks. During the pandemic, I and many others on this committee and beyond introduced pieces of legislation either banning the practice of stock buybacks or regulating them in a broad kind of spectrum of possibility, and one of the issues that I had brought up was actually banning the practice of stock buybacks for any corporation receiving public assistance, essentially getting bailed out, while also mandating workers be granted an equity stake or the public being granted an equity stake in any of those kinds of public buy-ins to those companies.

Now, I want to dig into this issue a little bit more. For folks following this at home, would you say it is fair to describe stock buybacks as the practice of a company using its profit or margin to purchase shares of its own stock as opposed to other uses of its margin like investing in raising wages, research and development, et cetera?

Mr. GENSLER. If I could just broaden it out, I think the companies that use dividends and stock buybacks have made some decision to send money out of the company to their shareholders or to buy back their shares rather than investing. I think it is usually a two-step process. One decision is whether to invest, as you say, more in the factories, the innovation, and so forth, or to send it out to shareholders, and then usually a second decision on whether to do it through dividends or share buybacks.

Ms. OCASIO-CORTEZ. Thank you so much, Chair Gensler. And what we saw during the pandemic was that some of these same corporations that spent about \$6.3 trillion on stock buybacks between 2010 and 2019, also denied their workers hazard pay and personal protective equipment, claiming that it was too expensive.

On top of that, production of medical equipment that was necessary during the pandemic was also delayed due to many years of under-investments, in part, in research and development from these companies that were using some of their funds to purchase their own stock instead.

Would you agree that stock buybacks make no real contribution to the productive capabilities of a firm?

Mr. GENSLER. Again, both dividends and stock buybacks are a way that management and boards send money out of the company to shareholders, and so there is, as you say, some tradeoffs between that and what they are investing. Our role at the SEC is to make sure that we bring transparency to these considerations. Of course, those of you in Congress might debate whether to change those rules, but we try to bring transparency and ensure that there is not fraud or buybacks in circumstances where the company has insider information and the like.

Ms. OCASIO-CORTEZ. Thank you. President Reagan's SEC adopted Rule 10b-18, which limits stock buybacks under certain volume, broker, and timing conditions, although the amount that a large company can spend on buybacks on a daily basis under this rule is often in the hundreds of millions of dollars. Conforming to these conditions allows a company entry to a "safe harbor." Does the SEC actively monitor whether corporate buyback activity remains within its safe harbor?

Mr. GENSLER. You raise a good point. It relates to earlier debates about resources, but we try to use our resources across the Agency to ensure compliance with the laws. I have asked staff in terms of stock buybacks, could we also use some authorities that were put in place under Dodd-Frank about the disclosures—

Ms. OCASIO-CORTEZ. I apologize, Chair Gensler, but is that a, "no," due to resource issues that the SEC does not actively monitor?

Mr. GENSLER. It is more nuanced than that.

Ms. OCASIO-CORTEZ. Okay.

Mr. GENSLER. We pursue, and we use the Enforcement and Examination and Corporation Finance staff to look at what we can, but there are 7,000 public companies in the United States.

Ms. OCASIO-CORTEZ. Understood. Would the SEC consider rescinding Rule 10b-18 and issuing new guidance which clearly states that corporations may be held liable for stock buybacks that constitute potential market manipulation?

Mr. GENSLER. I think it is clear right now that if it is market manipulation, you can be held accountable. What I have asked the staff to do is to look at this more broadly because we have new authorities under Dodd-Frank to actually get more transparency in this area as well.

Ms. OCASIO-CORTEZ. Great. Thank you very much.

Chairwoman WATERS. Thank you.

The gentleman from South Carolina, Mr. Timmons, is now recognized for 5 minutes.

Mr. TIMMONS. Thank you, Madam Chairwoman. And thank you, Chair Gensler, for taking your time to be with our committee today. Back in May, the Securities and Exchange Commission's Small Business Capital Formation Advisory Committee made two

specific recommendations to you, not simply to stimulate capital formation for new small businesses, but also to make it easier for women- and minority-founded enterprises to raise capital for their entrepreneurial endeavors. The advisory committee noted that traditional institutional investors are known for pattern matching or making investment decisions that replicate patterns of who a successful entrepreneur has looked like in the past, but, unfortunately, this often locks out women and minorities, who are often different from traditionally successful entrepreneurs.

The changes recommended by the advisory committee were: number one, increasing the cap on the aggregate amount of capital contributions in uncalled committed capital from \$10 million to \$150 million; and number two, increasing the allowable number of investors or beneficial owners from 250 to 600 for qualifying venture capital funds.

Following their recommendations, I introduced the Improving Capital Allocation for Newcomers Act of 2021, or the ICAN Act, which would codify these recommendations. We all know capital is the life blood of all businesses, but especially so for small businesses in their formative stages.

Chairman Gensler, would you support codifying these recommendations, increasing the aggregate amount of capital allowed from \$10 million to \$150 million and increasing the allowable number of investors from 250 to 600 for qualified venture capital funds that your advisory committee made?

Mr. GENSLER. I would want to take a look at your legislation, sir, and try to work with you on it. I think that there is a balancing act in all of these as to, how do we ensure that investors get the appropriate disclosure, whether it be in a venture capital fund or otherwise? And it is important that investors get that disclosure, but I look forward to working with you and to looking at your legislation more specifically.

Mr. TIMMONS. I really appreciate that, and I look forward to working with you as well. We will get you a copy here after this hearing.

I want to end my time by responding to some of the comments that Chairwoman Waters made in her opening statement today regarding the debt limit. She said that the Republicans are insisting on a debt default, and that we are playing a dangerous game of chicken. Two things are obvious here: First, no one wants a default; and second, if there is a game of chicken going on, it takes two to tango. Yesterday, President Biden said that Republicans refusing to raise the debt limit for him was hypocritical, dangerous, and—this really got me—disgraceful. I find that statement to be the height of hypocrisy since then-Senator Biden voted against raising the debt ceiling 3 times during the George W. Bush Administration in 2003, 2004, and 2006—3 separate times.

The Republicans' position on raising the debt ceiling has been clear for months now. If Democrats want to spend trillions of dollars on their reckless tax and spending spree in a partisan manner, then they should have to raise the debt ceiling in a partisan manner as well. They have completely rejected us as governing partners from the time President Biden was sworn in up until now, when they want to raise the debt ceiling. This is not how that

works. Congress has raised a debt ceiling through reconciliation before; it can do it again. Just last week, the Senate Parliamentarian laid out the process for doing so.

Republicans will not be complicit in the Democrats sprint towards socialism in America. If we default in a few weeks, there will be no one to blame except the unified Democratic government in the White House and Congress. They control both Houses of Congress and the Executive Branch. They will own this default if it happens, but I don't think it will. I do believe the Democrats will come to their senses and use reconciliation to get this done.

The only reason Democrats in Congress have not already gone down the path of reconciliation is because they know it will be a tough vote since, when using reconciliation, they will have to specify the exact dollar amount they want to raise the limit instead of simply suspending the debt limit for a period of time. Admittedly, that is a tough vote. No one wants to be on the record voting to raise a debt limit by several trillion dollars, and if my Democrat friends are going to pass this reckless tax and spending spree, that is exactly what they will have to do. I just hope my friends figure out exactly how much money they are going to spend on this thing soon because I would hate for them to not raise the debt limit high enough and find themselves in the same position, again, in a matter of months when the bill comes due.

With that, Madam Chairwoman, I yield back.

Thank you.

Chairwoman WATERS. Thank you very much.

The gentleman from Illinois, Mr. Garcia, is now recognized for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Madam Chairwoman.

And good afternoon, Chairman Gensler. Thank you for joining us. I represent a working-class district in Chicago. Many of my neighbors lost their jobs during the COVID-19 pandemic and many lost their businesses. But, so far, we have avoided a financial crisis. That wasn't luck. That comes from the robust protections that Congress put on our banking system with Dodd-Frank and active intervention from our regulators, but we aren't safe yet. People in my neighborhood still worry about losing their homes, but the stock market and cryptocurrency markets are slinging up and down. You can see the instability.

For instance, with respect to stablecoins, they are valued at nearly \$70 billion, but they are bigger than that. They make up a tremendous part of the market for cryptocurrency, and the same investors who buy cryptocurrency are in the stock market, which affects our whole economy. We know the risks are there, and it is up to us to protect our markets because my constituents can't afford another financial crisis.

Chair Gensler, are you worried that stablecoins might pose a systemic risk to our economy, and is that something that the Financial Stability Oversight Council (FSOC) is looking into?

Mr. GENSLER. Thank you. I think that my colleague, my good friend, Secretary Yellen is leading this, and we are looking at stablecoins right now in terms of a number of matters. You asked whether it could impinge upon financial stability. We are also look-

ing at how it relates to guarding against illicit activity and investor protection.

And I think there are issues in all three buckets, not just financial stability. There is about \$125 billion of these coins right now. There are four or five big ones, and those coins are intertwined in a crypto trading system where, while they are only about 6 or 7 percent of the market value of cryptocurrencies, they represent probably three quarters or 80 percent of all of the transactions in crypto versus a stablecoin. That is why I said it is like the poker chip at the gaming tables, but they are used to buy and lend other cryptocurrencies. The other thing is, it has grown about roughly tenfold in the last 15 months, so you could see where it could start to undermine things if it continues to grow, to undermine traditional banking payment systems if it is not brought inside of the remit of banking, and also undermine some of that which we do in investor protection at the CFTC and the SEC.

Mr. GARCIA OF ILLINOIS. Thank you for that. And, as we have seen to the south of us in El Salvador, with President Bukele's announcement that he would make Bitcoin a national currency last month, thousands of people took to the streets of the capital to protest this move as dangerous and unconstitutional. Given the volatility that we have seen in Bitcoin prices, it seems to me like a risky move.

Mr. Gensler, you have seen how much the price of Bitcoin moves in response to announcements from U.S. regulators. Do you think speculation and regulatory arbitrage are important drivers in the price of Bitcoins?

Mr. GENSLER. Bitcoin, which was the first cryptocurrency based upon Satoshi Nakamoto's paper in the middle of the economic crisis in 2008, is a highly-speculative asset, but it is a stored value that people wish to invest in, as some have invested in gold since antiquity, but I think you are also right that it is used, not just Bitcoin but other cryptocurrencies, stablecoins, as you said, as arbitrage between regulatory regimes. I think that is why stablecoins and cryptocurrencies became intertwined, frankly, to avoid another digital type of money, and it is called the U.S. dollar. The U.S. dollar is a digital form of money. We already have digital money, but this has been used in part for these other reasons. So, it is a speculative store value, yes, Bitcoin. Many of these 5,000 or 6,000 other projects are also weighed to raise money, and they are digital investment contracts depending upon the facts and circumstances, and they are a way to arbitrage some of our rules.

Mr. GARCIA OF ILLINOIS. Thank you.

Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much.

The gentleman from New Jersey, Mr. Gottheimer, who is also the Vice Chair of our Subcommittee on National Security, International Development and Monetary Policy, is now recognized for 5 minutes.

Mr. GOTTHEIMER. Thank you, Madam Chairwoman.

And thank you, Mr. Gensler, for being here today. We heard Federal Reserve Chairman Jerome Powell testify how the Fed was not seeking to ban stablecoins and other cryptocurrencies, even as they continue to examine the potential creation of a central bank digital currency. You previously stated how stablecoins could be treated as

securities, and criticized them as poker chips, as you referred to them several times today.

Given your skepticism, how do you envision stablecoins being integrated into the broader U.S. financial system, particularly the digital payment space? And what do you feel should be the SEC's role in this process?

Mr. GENSLER. It is good to see you again, Congressman. Thank you. Look, even poker chips in a regulated environment are a good thing. Poker chips at a casino do serve a purpose that provides greater transparency at the gaming table, and they even lower the security risk about money being stolen at the casino. I just want to caution, I am saying how it is being used economically. I think working with our colleagues across the President's Working Group, we are going to come up with some recommendations, but I do think, to the extent that a stablecoin is directly tied to deposits, cash in a bank, and it is one to one, and it has clear and clean reserves, that type of digital payment system, if that is all it is, then we can put banking remit around it.

I think that many of these, at the other end of the spectrum, might be investing in securities, and they start to take on characteristics like money market funds or others, and we have had some challenges, particularly since money markets are larger, about instability in money markets when there are kind of stressed periods and runs on money markets during periods of stress. We wouldn't want to move that type of instability into these stablecoins.

And then, lastly, yes, I think they have been used inside the trading platforms and lending platforms—crypto, that is. They have been used, in part, to avert laws around tax compliance and illicit activity.

Mr. GOTTHEIMER. Thank you, Mr. Chairman.

I have opposed the concept of a financial transaction tax in the past, particularly because of the potential negative impacts on the U.S. as a leader in the financial industry, including many businesses that are in my district.

In March of this year, you stated in your written follow-up to the Senate Banking Committee that you have not previously studied any current proposals for imposing a financial transaction tax. I would just like to ask if you have any follow-up to that statement, and also inquire if you have any thoughts on how financial transaction tax might negatively impact the broader U.S. economy and our leadership in this space?

Mr. GENSLER. I haven't had occasion to study more. As you are probably aware, we are an Agency of about \$2 billion a year that is funded by securities fees, transaction fees, and at that level, the \$2 billion to fund the Agency, I think has worked smoothly in the markets. But I haven't studied anything that would be—of course, the debates have been about something much larger than that.

Mr. GOTTHEIMER. I am eager to hear back from you when you spend some time with it. And it is always good to see you. Thank you for your leadership, Mr. Chairman.

Mr. GENSLER. Thank you. I hope you and your family are staying well during these times.

Mr. GOTTHEIMER. You too, sir. Thank you.

I yield back.

Chairwoman WATERS. Thank you very much.

The gentlewoman from Michigan, Ms. Tlaib, is now recognized for 5 minutes.

Ms. TLAIB. Thank you so much, Madam Chairwoman. I am so sorry I had to do this in the car like this. Thank you so much for holding this important hearing. As you know, I have been incredibly passionate about accountability and especially, Chairman Gensler, I am very alarmed, as you all know, about the recent disclosures, if you haven't watched some of my comments, regarding several Federal Reserve officials who have made transactions during the pandemic that I believe violated the Fed's ethics guidelines and may have violated the law.

As you know, in February 2020, Fed Vice Chair Clarida traded between \$1 million to \$5 million out of a bond fund into stock funds. The next day, as you may know, Mr. Chairman, Fed Chair Powell issued a statement on the pandemic that was, "the first step in a wide-ranging central bank rescue that would ultimately push up stock prices." We also learned that Robert Kaplan, the president of the Dallas Fed, and Eric Rosengren, the president of the Boston Fed, made major transactions involving securities and markets supported by the Fed during COVID. The Fed's own ethic guidelines state that officials should avoid, "even an appearance of conflict between the personal interest, the interest of the system, and the public interest."

I want to ask you: These trades don't have, "the appearance of a conflict"; in my opinion, they are a conflict of interest. Chair Gensler, are you aware of these three instances, and is the SEC looking into these transactions as potential insider trading?

Mr. GENSLER. Congresswoman, I hope I can speak to this in the generic, because it wouldn't be appropriate to speak about any individual circumstance, but we at the SEC have a broad remit, and it is one that you have put in place in Congress that we would pursue what is known as trading on material, nonpublic information, whether people are at a company or even if people are within other agencies, and we have done so in the past. We will continue to do so in the future to help protect the integrity of the markets.

Ms. TLAIB. Chairman, so do you need an official letter from me to ask you to look into something? What do you need from me or from others? I know Senator Warren has been very public about some of the concerns, and I am telling you, the American people are very angry—it is [inaudible] where, again, they are in the position of public trust and folks are using that position for their own personal interests.

Mr. Chairman, tell me what I need to do so I can get a, "yes," answer, that you are looking into these three instances?

Mr. GENSLER. Let me be precise. We, as an Agency, look into things that are brought to our attention on many matters, but we are not allowed, in this setting or in other settings, to say that we are investigating or are not investigating something. That is the thing that protects the public as well. But I want to say, generally speaking, whether somebody is in the government or outside of the government, one is not to trade on material, non-public information, and that is what our laws are about.

And we pursue those. We have pursued them in the past when there have been members of the administrative or official sector, as well as even occasionally State and local actors in the official sector.

Ms. TLAIB. Okay. Let me ask you in a different way. Would prohibiting government officials like Members of Congress, the President, or members of the Board of Governors from holding or trading individual stocks limit conflict of interest and potential insider trading?

Mr. GENSLER. I think that as a policy matter, Congress took up—at least Members of Congress, in an Act 8 or 10 years ago, if I remember correctly, that taking it up more broadly could help instill greater confidence in this. We are going to do what we do at the SEC, and do well, with regard to holding people to our laws as you would want, but Congress could do even more. There is public transparency that Congress has already put in place, public transparency that those of us in the official sector have to file—

Ms. TLAIB. —by the time they file, we find out there was some conflicts or some obviously—that is the thing. Chairman Gensler, I want transparency in people filing. I am always about complying with that, but then what happens afterwards? We don't find out that they were held accountable, and then it continues and really taints our process to the point where people don't trust us anymore. And the chairwoman knows how incredibly passionate I am about this, but I don't think we should be allowing public officials to be trading stock, period. And, if you are going to be put in this position, that is a sacrifice you are going to have to make, because it is about the public's trust.

And so I just appreciate—I hope it is relayed, but I do appreciate you coming before the committee, but I hope you do go back to your team and let them know that this Member from Michigan is very concerned in the hopes that you are investigating these three instances. Thank you.

I yield back.

Chairwoman WATERS. Thank you very much.

The gentlewoman from Texas, Ms. Garcia, who is also the Vice Chair of our Subcommittee on Diversity and Inclusion, is now recognized for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Madam Chairwoman.

And thank you, Chairman Gensler, for being here with us today, and the end is in sight, the end is in sight. Thank you for your patience and your perseverance with us today. I appreciate the great work you have done so far in leading the SEC back in the direction of strong investor protection. The issues presented by crypto assets in stablecoins are far ranging, and while these discussions are evolving continually and there has been much discussion today, of course, I wanted to get some insight on how you and your colleagues at the SEC are framing the discussion.

As of yesterday, The Block reported that the total stablecoin market is estimated to be worth \$127 billion—I think you mentioned that—compare this between 2017 and 2019 when the stablecoin market grew from \$10 million to \$5 billion. So, it has skyrocketed, as you noted, in the last couple of years. Despite the intricacies of stablecoins and their proposed merits, it is absolutely

imperative that we recognize the systemic significance of this to the market.

Chairman Gensler, in your August 5th letter to Senator Elizabeth Warren, you stated, “In my view, the legislative priority should be center of crypto trading, lending, and DeFi platforms. Regulators would benefit from additional plenary authority to write rules for and attach guardrails to crypto trading and lending.”

Could you discuss a couple of examples of legislative measures you have in mind for protecting the financial sovereignty of our markets, particularly as it pertains to stablecoins?

Mr. GENSLER. As it pertains to stablecoins, I think that they have provided an alternative way to trade on these trading platforms, and they are intertwined inside of crypto trading around the globe. They initially came along around 8 years ago, frankly, so that not only to be efficient, but also to avoid some of the overseas—some of the anti-money laundering protections that were around the globe when these trading platforms were unable to get bank accounts at various banks around the globe.

I think they have evolved now to be at the center of the trading and lending platforms and that it would be really helpful to work with Congress around these. Again, at one end of the spectrum, it might just be something digital around the digital dollar. Remember, we already have a digital dollar. It would be sort of misleading to say we don't, but this is something, an additional digital wrapper around the digital dollar, and the question is, what does it provide and how do we protect the public still for tax compliance, anti-money laundering, and financial stability?

At the other end, they start to look like money market funds and how do we, the SEC, protect the public for investor protection and the like. I think that there is a range of these different coins, and even if they are all the way over on one end, we have to protect the public in terms of these, guarding against solicitous activity, tax, and financial stability. And, lastly, I do think that the platforms, the lending platforms, the crypto trading platforms where there are 5,000 or 6,000 other cryptocurrencies, non-stablecoins, so to speak, are highly volatile, speculative, usually investment vehicles, we need to get our arms around that.

Ms. GARCIA OF TEXAS. Thank you. I want to shift gears a little bit, too. I think you characterized it as human capital in your written remarks, and this committee has been advocating for the creation of Offices of Minority and Women Inclusion across all financial regulators. In 2018, the SEC asked almost 1,500 of those entities regulated by the SEC to complete a voluntary diversity assessment. Only 5 percent responded to the request and submitted data.

What are you in, the OMWI Office, doing to increase participation? Have you considered making these assessments yearly and mandatory or using some other inducement to encourage greater participation in these assessments?

Mr. GENSLER. Thank you for flagging that, and I do think that we could do better than the 5 percent, but what—we would have to sort of encourage and—shall we say—make it easier to participate. Separate from that, because that initiative is really important, but separate from that, we are also looking at investor demand to know more about the work forces of American companies

or listed companies. This includes many overseas companies as well listed here. And in those disclosures, I have asked staff to consider whether we should also have this disclosure of the forms that are shared with the Department of Labor, the EEO1 diversity disclosure forms—

Ms. GARCIA OF TEXAS. I am familiar with that. I have worked at the EEOC before, but would you consider doing them yearly rather than every other year?

Mr. GENSLER. I like that suggestion. Could I get back to you and work with staff and see because—

Ms. GARCIA OF TEXAS. You are breaking up.

Chairwoman WATERS. Thank you very much.

The gentlelady's time has expired.

Ms. GARCIA OF TEXAS. Madam Chairwoman, he froze there for a minute. I didn't get his response clearly.

Chairwoman WATERS. Yes. You are way over time.

Ms. GARCIA OF TEXAS. Okay. Thank you.

Chairwoman WATERS. Will you please follow up in writing?

Ms. GARCIA OF TEXAS. Yes, ma'am. I will.

I yield back. And I apologize.

Chairwoman WATERS. Thank you. The gentleman from Texas, Mr. Taylor, is now recognized for 5 minutes.

Mr. TAYLOR. Thank you, Madam Chairwoman.

Can you hear and see me?

Mr. GENSLER. I can see you, and I can see the Texas flag.

Mr. TAYLOR. Okay. Thank you, Mr. Chairman. I appreciate this hearing, and the opportunity for us to discuss important issues, and I had wanted to talk about crypto, but I think that has been covered very well by my colleagues. So, I will skip ahead.

In your opening remarks, you talked about the use of artificial intelligence (AI) and machine learning in the markets. Did I hear you correctly that you are using it at the Securities and Exchange Commission presently?

Mr. GENSLER. We have a really good analytics group, but I would say our use of machine learning is limited compared to the capital markets, which are really using them increasingly to even follow a hearing like this. Everything that we are saying could be followed by artificial intelligence for sentiment analysis and, depending upon how you or I speak, could be fed into the computers and to see whether markets move up or markets move down.

But we have a very limited, at this stage, in 2021. I hope to do better in the future.

Mr. TAYLOR. Are you using AI, and machine learning, in your stock watch, in your anti-insider trading efforts?

Mr. GENSLER. We are using data analytics, which I would rather not discuss in public, the data analytics we use. But I would say that we are at this stage, frankly, behind the capital market participants, the high-frequency trading shops, the big asset managers and their use of sophisticated data analytics like machine learning.

Mr. TAYLOR. And the reason I ask this is that I was actually in New York yesterday—and of course, I am back in Texas today—meeting with Bloomberg. And they have an incredible data analytics operation in the valuation of bonds.

And they are doing that as a market service, actually selling their service in terms of valuing bonds. And they have 150 people working around the clock trying to value bonds, and they are tweaking a machine, AI, to figure out what is the proper value for a bond.

And it seems to me that there are some applications for AI within the Federal Government. I think the Securities and Exchange Commission comes to mind.

Have you given any thought to where you think you could expand the efficiency of your operation at the Securities and Exchange Commission, whether it is at stock watch? That is what comes to my mind, is the anti-insider trading operation where you are trying to track a tremendous [inaudible].

Mr. GENSLER. I think that there are multiple places. And I am sort of a finance person, a markets person, but I had this opportunity at MIT for a few years, and I really studied this more closely.

I think we could use it not only in market surveillance, which is actually what you are talking about, market surveillance, but also throughout our examination, and potentially enforcement, where we can look at troves of data to look at patterns.

What machine learning, what artificial intelligence is so good at is extracting patterns from data and finding those patterns in market surveillance or in other examination. And right now many—Bloomberg, as you mentioned—but many market participants are using it and using it to basically maximize their returns.

I think we have a second thing at the SEC that we are looking at, which is how are platforms using it to engage with the public, and are they optimizing their revenues based upon the data, whether it is social media or elsewhere, but are they optimizing for their revenues?

If they are optimizing for our engagement, that can be a positive, but it also can raise some conflicts if they are maximizing for their revenues rather than for the public's investment returns.

Mr. TAYLOR. Sure, Chair Gensler. I look forward to working with you to identify areas where you can modernize the SEC, use AI, artificial intelligence, machine learning, to find better ways to do your job. Whether it is high-frequency trading, finding irregularities within markets, I think that is an important opportunity.

And as you have so eloquently pointed out during this hearing, we enjoy the greatest capital markets in the world, and I think having a sophisticated SEC that is prepared to do its job and make sure that they have advanced tools to go do that only makes sense.

With that, Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much.

The gentleman from Massachusetts, Mr. Auchincloss, who is also the Vice Chair of the committee, is now recognized for 5 minutes.

Mr. AUCHINCLOSS. Thank you, Madam Chairwoman.

And Chair Gensler, I appreciate your thoughtful answers and your persistence today. You are almost done.

You have been very clear in your written and in your verbal testimony that you want to bring crypto into the basic bargain, as you describe it, where investors get to make their own decisions about how much risk they take on, and companies have to report con-

sistent and decision-useful information. You want to bring crypto into that bargain.

You have also been clear that you think most of the major crypto players have at least some elements of their businesses that are securities and should operate on that default assumption, and that you would like each of these crypto actors to be coming to speak with the SEC on a one-on-one basis to get feedback from you, and also, I think from what you have said, to give you feedback on what kind of regulations make sense.

I think everything that you have outlined sounds like a reasonable way to approach a nascent, promising industry. I think we are reaching a tipping point, though, where we need more stable, broad-based law that does not require a phone call with the Chairman of the SEC, but that a startup with their counsel can understand the risks that they are getting into from a regulatory perspective. And so, from that end, we need Congress to act.

My question to you is, would it be most helpful for Congress to create and delineate a new class of security that had a separate regulatory apparatus, or would it be most useful for Congress to divide explicitly crypto assets between the CFTC and the SEC?

Mr. GENSLER. I think, actually, the laws are pretty clear with regard to these and that those entrepreneurs and their lawyers could look. And they don't even have to squint. They can look. The Supreme Court has really said what is an investment contract.

In terms of your question, I think that between the CFTC and SEC, we have good authorities. Chair Behnam and I have been talking a lot about how we can coordinate better.

I don't think there is a need to set something new up, but I do think that if something is a security, people have raised: Well, but can we follow everything that was written for traditional bonds and stocks?

And so, we want to hear that. We want to think about that, and Congress would probably want to think about that as well.

I would add a cautionary note: If Congress were to carve something out of the securities law, it could also undermine 90 years of economic success and undermine the 7,000-plus issuers now who would say, well, wait a minute, there is regulatory arbitrage. Somebody else is raising money in the capital markets, operating like a security, but they have a different regime.

Mr. AUCHINCLOSS. I fear that, but then I guess I would come back to you, because I have been listening this whole hearing, and I haven't really heard an ask from you about what Congress can do to make your job easier as it comes to regulating crypto.

I think you and I are in agreement that we need to regulate crypto. I agree with you just intuitively that a new regulatory agency doesn't sound like it makes a whole lot of sense. I believe you that a lot of the law is settled if entrepreneurs and their counselors would examine it in good faith. But there clearly are gray areas, and businesses, and especially investors, don't like uncertainty. They deserve some certainty. So, how can we help you?

Mr. GENSLER. Let me raise two areas, I think.

One is with regard to stablecoins, the stablecoins that are all the way over this end that are really just investing in cash, not operating more like a money market fund.

I know, and I let them speak for themselves, but my colleagues, the bank regulators, think there is more that we can do with Congress' help on that end of the spectrum in terms of stablecoins. Even the ones that are all the way over and operating more like money funds have to be taken into consideration.

I think in terms of working with the CFTC and the SEC, we have robust authorities over exchanges, over somebody that is trading securities on their platforms. The CFTC does not. They are a derivatives regulator, but they have enforcement authorities over commodities.

What happens when we have a platform that has a few commodities but mostly securities on it and the coordination between the two of us and that oversight, and also authorities in that regard? There are many, I would say, secondary and third-level issues as well.

Mr. AUCHINCLOSS. I appreciate that.

And then, just a final point before I run out of time, we have heard some colleagues on the Republican side of the aisle talk about ESG investing, and they are worried that it is getting politicized. I think one of them mentioned the debate about climate change.

I would just say for the record that there is a debate about climate change to the extent that there is a debate about evolution by natural selection. You can debate it, but the science is clear. And I think what your Agency is doing by making ESG more transparent and market actionable is important and should be continued.

Madam Chairwoman, I would like to yield back my time. And I would like to request unanimous consent to include in the hearing record a letter from the Investment Adviser Association and the National Association of Personal Financial Advisors.

Chairwoman WATERS. Without objection, it is so ordered.

Thank you very much.

Are there any Members on the platform who were not recognized because of their absence early on, and they have returned now?

If not, I would like to thank our distinguished witness for his testimony today.

And without objection, letters from the North American Securities Administrators Association, the Council of Institutional Investors, the California Public Employees' Retirement System, and the Consumer Federation of America will all be included in the record.

Without objection, it is so ordered.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place his responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

I ask Chair Gensler to please respond as promptly as you are able.

I would also like to thank Chair Gensler for the time that he has given to us today and for the way that he has shared information that has been so important to all of our Members.

Mr. GENSLER. Thank you, Madam Chairwoman.
Chairwoman WATERS. And I thank you all so very much.
This hearing is adjourned. Thank you.
[Whereupon, at 4:07 p.m., the hearing was adjourned.]

A P P E N D I X

October 5, 2021

Testimony of Gary Gensler
Before the United States House of Representatives
Committee on Financial Services
Oct. 5, 2021
Washington, D.C.

Good afternoon, Chairwoman Waters, Ranking Member McHenry, and members of the Committee. I'm honored to appear before you today for the second time as Chair of the Securities and Exchange Commission. As is customary, I will note that my views are my own, and I am not speaking on behalf of my fellow Commissioners or the staff.

We are blessed with the largest, most sophisticated, and most innovative capital markets in the world. The U.S. capital markets represent 38 percent of the globe's capital markets.¹ This exceeds even our impact on the world's gross domestic product, where we hold a 24 percent share.²

Furthermore, companies and investors use our capital markets more than market participants in other economies do. For example, debt capital markets account for 80 percent of financing for non-financial corporations in the U.S. In the rest of the world, by contrast, nearly 80 percent of lending to such firms comes from banks.³

Our capital markets continue to support American competitiveness on the world stage because of the strong investor protections we offer.

We keep our markets the best in the world through efficiency, transparency, and competition. These features lower the cost of capital for issuers, raise returns for investors, reduce economic rents, and democratize markets. That focus on competition is in every part of the SEC's work, particularly with respect to market structure.

We can't take our remarkable capital markets for granted, though. New financial technologies continue to change the face of finance for investors and businesses. More retail investors than ever are accessing our markets. Other countries are developing deep, competitive capital markets as well.

The SEC is a remarkable organization. In just under five months, I have gotten to know many of the dedicated 4,400 people across 12 offices. Our agency covers nearly every part of the \$110 trillion capital markets. Those markets touch many Americans' lives, whether they're investing for their future, borrowing for a mortgage, taking out an auto loan, or taking a job with a company that's tapping our capital markets. We engage with companies raising money and with

¹ See Securities Industry and Financial Markets Association, "2021 SIFMA Capital Markets Fact Book," available at <https://www.sifma.org/wp-content/uploads/2021/07/CM-Fact-Book-2021-SIFMA.pdf>.

² See World Bank data: <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

³ Ibid.

the key parties that sit in between businesses and investors, including accountants, auditors, and investment managers.

While in August we authorized voluntary return to office, we've largely been remote for about 19 months now, and will keep this posture until at least Jan. 3, 2022. I cannot compliment the dedication of this staff enough for their service to the American public.

In this testimony, I will cover some of the broad themes from the SEC's unified agenda,⁴ before closing with a few words on our Enforcement and Examinations divisions and our resources.

- Market Structure
- Predictive Data Analytics
- Issuers and Issuer Disclosure
- Funds and Investment Management

Market Structure

I'll start with market structure. In every generation, we have to look at how we can revisit our rule sets to better enhance efficiency and competition in our markets.

Markets work best when they are transparent and competitive. Issuers and investors alike benefit from that competition because it lowers the cost of capital.

I have asked staff to take a look at five market structure-based projects across our \$110 trillion capital markets: the Treasury market, non-Treasury fixed income markets, equity markets, security-based swaps, and crypto asset markets.

Treasury Market

First, let me turn to the Treasury market. This \$22 trillion market⁵ is integral to our overall capital markets as well as to global markets. It is the base upon which so much of our capital markets are built. Treasuries are embedded in money market funds; myriad other markets and financial products are priced off of Treasuries; and they are an essential part of our central bank's toolkit. They are called the "risk-free asset" not just here in the U.S. but globally. They are how we, as a government and as taxpayers, raise money. We are the issuer.

During the start of the Covid crisis, liquidity conditions in the Treasury market deteriorated significantly. This wasn't the first time we observed challenges in this market, though. Back in

⁴ See <https://www.sec.gov/news/press-release/2021-99>.

⁵ Statistics from Securities Industry and Financial Markets Association: <https://www.sifma.org/resources/archive/research/statistics/>

October of 2014, there was the Treasury “Flash Crash.” In the fall of 2019, we had significant dislocations in Treasury funding markets, called the Treasury repo market.

I’ve asked staff to work with our colleagues at the Department of the Treasury and the Federal Reserve on how we can better enhance resiliency and competition in these markets.

To the extent that this market is more efficient, that could potentially save money for U.S. taxpayers and lower the cost of our debt. To the extent that this market is more resilient, it is less likely to add to systemic risks during times of stress.

We will seek to consider some of the recommendations that external groups, like the Group of Thirty⁶ and Inter-Agency Working Group for Treasury Market Surveillance,⁷ have offered around potential central clearing for both cash and repo Treasuries.

Further, I’ve asked staff to reconsider some initiatives on Treasury trading platforms, and also to consider how to level the playing field by ensuring that firms that significantly trade in this market are registered as dealers with the SEC.

Non-Treasury Fixed Income Market

Additionally, I’ve asked staff for recommendations on how we can bring greater efficiency and transparency to the non-Treasury fixed income markets — corporate bonds, a \$11 trillion market; municipal bonds, a \$4 trillion market; and asset-backed securities (which back mortgages, automobiles, and credit cards), a \$13 trillion market.⁸ This market is so critical to issuers. It is nearly 2.5 times larger than the commercial bank lending of about \$10.5 trillion in our economy.⁹

Equity Market

Next, I’d like to discuss equity market structure.

Every so often, in response to new technologies, the SEC updates its rules around market structure. After the internet came along, buyers and sellers could meet in new trading venues. An earlier Commission created a new rule in the 1990s to facilitate that. In 2005, the Commission further addressed this fragmented structure under Regulation National Market Structure.

⁶ See Group of Thirty, “U.S. Treasury Markets: Steps Toward Increased Liquidity,” available at <https://group30.org/publications/detail/4950>.

⁷ See Brian Smith, “Remarks at the Federal Reserve Bank of New York’s Annual Primary Dealer Meeting” (April 8, 2021), available at <https://home.treasury.gov/news/press-releases/fy0116>.

⁸ Statistics from Securities Industry and Financial Markets Association: <https://www.sifma.org/resources/archive/research/statistics/>

⁹ See Federal Reserve, “Assets and Liabilities of Commercial Banks in the United States,” available at <https://www.federalreserve.gov/releases/h8/current/default.htm>.

In the last 16 years, though, technology has expanded by leaps and bounds. It has changed how market makers interact, how trading platforms compete, how investors access those markets, and the economic incentives amongst these various market participants. Retail investors can trade over commission-free brokerage apps. Telecommunication has transformed the speed of high-frequency trading. That wasn't the case even a few years ago.

Despite these new technologies and developments affecting the structure of equity markets, we are often relying on rules written in an earlier period. Rules mostly adopted 16 years ago do not fully reflect today's technology.

I believe it's appropriate to look at ways to freshen up the SEC's rules to ensure that our equity markets reflect our mission and are as efficient and competitive as they could be.

I think it's time we take a broad view about what the market structure should look like today. The Commission started this exercise with regard to market data under former Chairman Jay Clayton. I've asked staff for recommendations, particularly around two key questions:

First, how do we facilitate greater competition and efficiency on an order-by-order basis — when people send each order into the marketplace?

While there is fragmentation amongst trading platforms, past reforms and new technologies may have led to more segmented markets and higher concentration amongst market makers. Nearly half of the volume transacted is executed in "dark pools" or by wholesalers. One firm has publicly stated that it executes nearly half of all retail volume.¹⁰ Further, I wonder whether this means that the consolidated tape — the so-called National Best Bid and Offer — fully reflects the full range of activity on exchanges.

Second, how do we address financial conflicts in the market? As I have stated previously, I believe payment for order flow and exchange rebates may present a number of conflicts of interest.

Around those two key principles, I've asked staff for recommendations as to how we can ensure a more level playing field, enhance competition, and improve resiliency in our markets.

Moreover, I believe shortening the standard settlement cycle could reduce costs and risks in our markets. I've directed the SEC staff to put together a draft proposal for the Commission's review on this topic.

Security-Based Swaps

¹⁰ See Citadel Securities, "Equities & Options," available at <https://www.citadelsecurities.com/products/equities-and-options/>.

The security-based swaps market is not a large market compared to the fixed income and equity markets, but it was at the core of the 2008 financial crisis. More recently, total return swaps were at the heart of the failure of Archegos Capital Management, a family office.

This year, the SEC is implementing rules related to securities-based swaps. Security-based swap dealers and major security-based swap participants will begin registering with the Commission by Nov. 1.

Further, on Nov. 8, new post-trade transparency rules will go into effect, requiring transaction data to be reported to a swap data depository and thus available to the SEC and, under appropriate circumstances, other regulators. Then, beginning on Feb. 14, 2022, the swap data repositories will be required to disseminate data about individual transactions to the public, including the key economic terms, price, and notional value.

In addition, the Commission has yet to finish the rules for the registration and regulation of security-based swap execution facilities. I've asked staff for recommendations on how the Commission can finalize mandates to stand up the regime established under the Dodd-Frank Act and to consider whether it would be best to do this consistent with the regime established by the Commodity Futures Trading Commission (CFTC) for security-based swap execution facilities. The CFTC has had swap execution facility rules that have worked well since they were adopted nearly a decade ago.

Further, to allow the Commission and the public to see aggregate positions, Congress under Exchange Act Section 10B gave us authority to mandate disclosure for positions in security-based swaps and related securities. I've asked staff to think about potential rules for the Commission's consideration under this authority. As the collapse of Archegos showed, this may be an important reform to consider.

Crypto Assets Market

Next, I'll turn to a newer market structure issue: crypto assets.

Right now, large parts of the field of crypto are sitting astride of — not operating within — regulatory frameworks that protect investors and consumers, guard against illicit activity, and ensure for financial stability.

Currently, we just don't have enough investor protection in crypto finance, issuance, trading, or lending. Frankly, at this time, it's more like the Wild West or the old world of "buyer beware" that existed before the securities laws were enacted. This asset class is rife with fraud, scams, and abuse in certain applications. We can do better.

I have asked SEC staff, working with our fellow regulators, to work along two tracks:

One, how can we work with other financial regulators under current authorities to best bring investor protection to these markets?

Two, what gaps are there that, with Congress's assistance, we might fill?

At the SEC, we have a number of projects that cross over both tracks:

- The offer and sale of crypto tokens
- Crypto trading and lending platforms
- Stable value coins
- Investment vehicles providing exposure to crypto assets or crypto derivatives
- Custody of crypto assets

With respect to investor protection, we're working with our sibling agency, the CFTC, as our two agencies each have relevant, and in some cases, overlapping jurisdiction in the crypto markets. With respect to a broader set of policy frameworks, we're working with not only the CFTC, but also with the Federal Reserve, Department of Treasury, Office of the Comptroller of the Currency, and other members of the President's Working Group on Financial Markets, on these matters.¹¹

Further, I've suggested that platforms and projects come in and talk to us. Many platforms have dozens or hundreds of tokens on them. While each token's legal status depends on its own facts and circumstances, the probability is quite remote that, with 50, 100, or 1,000 tokens, any given platform has zero securities. Make no mistake: To the extent that there are securities on these trading platforms, under our laws they have to register with the Commission unless they qualify for an exemption.

I am technology-neutral. I think that this technology has been and can continue to be a catalyst for change, but technologies don't last long if they stay outside of the regulatory framework. I believe that the SEC, working with the CFTC and others, can stand up more robust oversight and investor protection around the field of crypto finance.

Predictive Data Analytics

The second theme is predictive data analytics.

We are living in a transformational time, perhaps as transformational as the internet itself. Artificial intelligence, predictive data analytics, and machine learning are shaping and will continue to reshape many parts of our economy.

To take just one example, I believe we're in an early stage of a transition toward driverless cars. Policymakers already are thinking through how to keep passengers and pedestrians safe, if and when these changes take hold.

Finance is not immune to these developments. Here, too, policymakers must consider what rules of the road we need for modern capital markets and for the use of predictive data analytics.

¹¹ See "Readout of the Meeting of the President's Working Group on Financial Markets to Discuss Stablecoins" (July 19, 2021), available at <https://home.treasury.gov/news/press-releases/jy0281>.

Today, trading platforms have new capabilities to tailor marketing and products to individual investors. While this can increase access and choice, such differential marketing and behavioral prompts raise new questions about potential conflicts within the brokerage, wealth management, and robo-advising spaces, particularly if and when brokerage or investment advisor models are optimized for the platform's revenue and data collection.

These models also could inadvertently reflect historical biases embedded in data sets that may be proxies for protected characteristics, like race and gender.

Advances in predictive data analytics also could raise some systemic risk issues when we apply new models and artificial intelligence across our capital markets. This could lead to greater concentration of data sources, herding, and interconnectedness, and potentially increase systemic risk. We put out a request for comment on digital engagement practices. The comment period closed last week.

Issues and Issuer Disclosure

The third theme relates to issuers and issuer disclosure.

Disclosures

Since the 1930s, when Franklin Delano Roosevelt and Congress worked together to reform the securities markets, there's been a basic bargain in our capital markets: investors get to decide what risks they wish to take. Companies that are raising money from the public have an obligation to share information with investors on a regular basis.

Those disclosures changes over time. Over the years, we've added disclosure requirements related to management discussion and analysis, risk factors, executive compensation, and much more.

Today's investors are looking for consistent, comparable, and decision-useful disclosures around climate risk, human capital, and cybersecurity. I've asked staff to develop proposals for the Commission's consideration on these potential disclosures. These proposals will be informed by economic analysis and will be put out to public comment, so that we can have robust public discussion as to what information matters most to investors in these areas.

Companies and investors alike would benefit from clear rules of the road. I believe the SEC should step in when there's this level of demand for information relevant to investors' investment decisions.

Special Purpose Acquisition Companies, China, and 10b5-1 Plans

There are three other important topics relating to issuers that we have prioritized at the SEC.

First, given the surge in special purpose acquisition companies (SPACs), I have asked staff for recommendations about enhancing disclosures in these investments. There are a lot of fees and potential conflicts inherent within SPAC structures, and investors should be given clear information so that they can better understand the costs and risks.

Second is related to China. We have another basic bargain in our securities regime, which came out of Congress on a bipartisan basis under the 2002 Sarbanes-Oxley Act. If you want to issue public stock in the U.S., the firms that audit your books have to be subject to inspection by the Public Company Accounting Oversight Board (PCAOB). While more than 50 jurisdictions have complied with this requirement, two do not: China and Hong Kong.

Once again on a bipartisan basis, Congress last year said that it's time for all jurisdictions around the world to comply with Sarbanes-Oxley. The SEC has acted quickly to meet our requirements under the Holding Foreign Companies Accountable Act of 2020 (HFCAA).

In September, the PCAOB adopted a rule to fulfill its obligations under the HFCAA. This was an important step to meet its requirements under the bill to protect U.S. investors. I expect that the Commission will promptly consider this rule with the hope that we remain on track to finalize its required rulemaking before the end of the year. As is customary, the SEC will seek public comment on the rulemaking and will consider whether to approve it after taking into account the comments that we receive. I believe it is critical that the Commission and the PCAOB work together to ensure that the audits of foreign companies accessing U.S. capital markets play by the same rules.

Further, we are working to enhance disclosures with regard to how Chinese companies issue securities in the U.S. Chinese companies conducting business in certain industries, such as internet and technology, are prohibited from selling their ownership stake to foreigners. As a workaround, they use structures called variable interest entities to raise capital on U.S. exchanges through shell companies in the Cayman Islands and other jurisdictions. We are working to ensure that the heightened risks related to these structures and other risks related to operating in China are clearly and prominently disclosed to investors.

The last priority area with respect to issuers is trading by corporate insiders. I have asked staff for recommendations on how we might tighten Rule 10b5-1 to modernize this 20-year-old safe harbor and fill perceived gaps in our insider trading regime.

Funds and Investment Management

The fourth theme I will discuss is the potential reforms we are exploring in the funds and investment management space. Last week, we held an open Commission meeting to vote on

enhancing the proxy voting disclosures that registered funds provide to shareholders. I was pleased to support those amendments. I'd like to discuss a number of other initiatives in this space.

First of all, we've seen a growing number of funds market themselves as "green," "sustainable," "low-carbon," and so on.

I've asked staff to consider ways to determine what information stands behind those claims and how we can ensure that the public has the information they need to understand their investment choices among these types of funds.

Additionally, staff are developing a proposal for the Commission's consideration on cybersecurity risk governance, which could address issues such as cyber hygiene and incident reporting.

The third topic centers on private funds, and in particular the conflicts of interest their managers may have and the information they are providing investors about the fees they charge. I believe we can enhance disclosures in this area, better enabling pensions and others investing in these private funds to get the information they need to make investment decisions. Ultimately, every pension fund investing in these private funds would benefit if there were greater transparency and competition in this space.

Fourth, following the challenges of the spring of 2020, I believe we can build greater resiliency in both money market funds and open-end bond funds. I've asked staff for recommendations to address those issues, building upon feedback we received on the President's Working Group report as well as other information.

Given the disruptions in the nearly \$5 trillion money market fund sector in spring 2020, particularly amongst prime money market funds, I believe it is time to reflect upon the reforms of 2014 and 2010 to see if we can further improve resiliency, particularly in times of stress.

Given significant growth in open-end funds and some lessons learned last spring, I believe it also is appropriate to take a close look at this \$5-plus trillion sector, to enhance resiliency during periods of stress.

Enforcement and Examinations

Beyond the new policy areas we are exploring, we also have robust enforcement and examinations regimes. About half of SEC staff work in the Divisions of Examinations and Enforcement, ensuring that firms are inspected and wrongdoers are held accountable for their misconduct. These functions are essential to protecting investors, maintaining fair, orderly, and efficient markets, facilitating capital formation, protecting the competitiveness of our capital markets, and holding those who violate our securities laws accountable.

Our Division of Enforcement continues to be the cop on the beat, build on its successes, and focus on matters important to investors and the marketplace in order to ensure that investors are being protected. We cover the entire securities waterfront — investigating and litigating every

type of case within our remit. Despite our remote work posture, the Division of Enforcement during the just-completed fiscal year is on track to exceed the number of stand-alone actions against wrongdoers, while total actions are expected to be slightly down.

Moreover, our Division of Examinations continues to play the role of the “eyes and ears of the Commission.” This staff is dedicated to protecting investors and working families through examinations of investment advisers, investment companies such as mutual funds and exchange traded funds, broker-dealers, and other SEC registrants. This just-finished fiscal year, this division exceeded the previous year’s numbers by completing more than 3,000 examinations and hundreds of non-exam registrant engagements responding to market events. These exam and outreach efforts are critical to ensuring that firms comply with our federal securities laws and regulations and to monitoring significant market events.

Resources

Having started at the SEC in the spring, I have been struck by the sheer breadth and scope of the operations of this great agency and remarkable staff. The SEC’s employees oversee 28,000 registered entities, more than 3,700 broker-dealers, 24 national securities exchanges, and seven clearing agencies.¹² A record 67 million U.S. families held direct and indirect stock holdings in 2019.¹³

As our capital markets have grown and technology continues to shape the face of finance, though, the SEC has not grown to meet the needs of the 2020s. At the end of fiscal year 2016, the SEC had 4,650 people on board. Nearly five years later, though, that number had decreased by about 4 percent.

In fiscal year 2020, the Division of Enforcement’s staff had 6 percent fewer staff on board than it did in fiscal year 2016. As another example, the SEC’s Division of Corporation Finance is currently 20 percent smaller than it was five years ago. Since 2016, the Division of Examinations’ total staff has remained relatively flat despite growth of more than 20 percent in the population of registered investment advisers and a 65 percent increase in the assets managed by these firms. Other divisions are similarly stretched thin.

Though I’m appreciative of the House’s decision to support a fiscal year 2022 budget of about \$2 billion, this would get us back to only a headcount of 4,859. I’m hoping to continue to work with Congress to build back to where we were in 2016, but also to have the resources reflective of the growth and evolution of the capital markets.

¹² See Securities and Exchange Commission, “Fiscal Year 2021 Congressional Budget Justification | Annual Performance Plan,” available at <https://www.sec.gov/files/secfy21congbudjust.pdf>. Numbers from fiscal year 2019. See Securities and Exchange Commission, “National Securities Exchanges,” available at <https://www.sec.gov/fast-answers/divisionsmarketregmrechangeshtml.html>.

¹³ Data drawn from the public version of triennial Survey of Consumer Finances (SCF): <https://www.federalreserve.gov/econres/scfindex.htm>. The SCF is sponsored by the Board of Governors of the Federal Reserve System with the cooperation of the U.S. Department of the Treasury. The 2019 SCF is the most recent survey.

As more Americans are accessing the capital markets, we need to be sure that the Commission has the resources to protect them.

Thank you and I look forward to answering your questions.

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House Committee on Financial Services

“Oversight of the Securities and Exchange Commission: Putting Investors and Market Integrity First.”

Rep. Ted Budd (R-NC)
Questions for the
Record October 6, 2021

Questions for the Honorable Gary Gensler, Chairman, Securities and Exchange Commission, from Congressman Ted Budd:

1) A paper published by the CATO Institute in September 2020, titled *“Too Much Information? Investors and corporations could benefit from less frequent financial reporting”*, found that reducing the frequency of reporting earnings data to one, two, or even three times a year would ultimately result in a regime that is more equitable for all investors and provides less volatile, and more useful, information at a lower cost. Specifically, the authors stated, “The most common criticism of quarterly reporting is that it leads to managerial “short-termism” whereby firms place an excessive emphasis on achieving short-run earnings goals at the expense of long-run growth. A firm preoccupied with satisfying financial markets every three months may be tempted to reduce productive long-term investments elsewhere—such as research and development—to hit its quarterly numbers.”

Do you agree that quarterly reporting frequency requirements for publicly traded companies is dated and needs to be modernized? Should companies of all sizes be given flexibility to provide financial reports less than four times a year?

2) In an op-ed in Forbes titled *How to Improve Quarterly Earnings Reports? Do Them Less Frequently*, by Ike Brannon published on September 25, 2020, it was stated, “What’s more problematic than the manipulation of reported earnings is that the incentive to meet quarterly earnings targets may actually influence material decisions made by executives. Stockholders should want companies to make decisions that maximize the present value of its long-run earnings, but companies often make material transactions that are deleterious to the bottom line solely to bolster short-term earnings”

Does the SEC believe the frequency of interim reporting frequency is a burden on US publicly traded companies and discourages capital formation? Is the SEC considering any initiatives to modernize the frequency of quarterly reports?

3) Publicly traded U.S. corporations currently file financial information four times a year in order to provide investors timely information of their company’s performance. Relative to other countries that have less frequent reporting requirements, do you believe this system is dated and does not reflect the economic realities that US companies are

faced with?

4) What is the SEC's position on moving to tri-annual reporting (i.e., reporting 3 times a year or every four months) or semi-annual for publicly traded companies of all sizes? Do you believe form 8-Ks are efficient filings for US public companies to disclose significant events or material information to investors in between regular interim SEC filings?

U.S. capital markets have benefited since the 1930's from registered issuers of securities providing both annual and quarterly reports to the public as prescribed in the Securities and Exchange Act of 1934. Quarterly disclosure as well as updates on Form 8-K and supplemental disclosure pursuant to Regulation Fair Disclosure give investors a better sense of the financial position of companies and important transactions in the periods between annual reports. This disclosure helps to foster market efficiency, investor protection, and capital formation. We will continue to work to explore ways across our various rules, including those periodic reporting to reduce unnecessary burdens or duplication for issuers, while enhancing appropriate investor protection.

Rep. Warren Davidson (R-OH)

October 5, 2021 Hearing

SEC Chairman Gensler

Question by Rep. Davidson

Question to Chair Gensler:

1. “Chair Gensler, you stated in a recent speech that you look forward to reviewing filings of exchange-traded funds (ETFs) under the Investment Company Act ('40 Act) that are limited to CME-traded Bitcoin futures, noting “the '40 Act provides significant investor protections for mutual funds and ETFs.” Can you please explain why you do not believe that the '33 Act provides investor protections akin to the '40 Act in the context of a Bitcoin ETF particularly when both types of products would be based upon the same underlying spot Bitcoin markets?”

The statutory framework and the regulatory process for reviewing products under the '33 Act and the '40 Act are different. The Commission continues to carefully consider all exchange-traded products under the frameworks and processes applicable to them. The first of the bitcoin futures ETFs have gone effective and are operating. There are also several bitcoin futures mutual funds that are currently trading.

Rep. Anthony Gonzalez (R-OH)

QFRs for Chairman Gensler

- 1. Chair Gensler, can you please explain why you do not believe that the '33 Act provides investor protections akin to the '40 Act in the context of a Bitcoin ETF particularly when both types of products would be based upon the same underlying spot Bitcoin markets?**

The statutory framework and the regulatory process for reviewing products under the '33 Act and the '40 Act are different. The Commission continues to carefully consider all exchange-traded products under the frameworks and processes applicable to them. The first of the bitcoin futures ETFs have gone effective and are operating. There are also several bitcoin futures mutual funds that are currently trading.

- 2. Chair Gensler, I understand that mutual funds pay costly "processing fees" to brokers to have prospectuses and other SEC-required documents delivered to investors. These fees cost fund investors approximately \$220 million annually. The SEC recently had an opportunity to reform the "processing fee" framework and failed to do so, just leaving it as it is. What is the SEC going to do to fix this broken system and protect the interests of retail fund investors?**

Thank you for your interest in the "processing fee" framework. I agree that these are important issues. A New York Stock Exchange ("NYSE") petition for Commission review of a disapproval by the staff (acting for the Commission pursuant to delegated authority) of a NYSE proposal to remove the fee schedule from its rules is currently before the Commission. The Commission looks forward to receiving additional public comments addressing this matter, and I'm looking forward to learning more about these issues. I appreciate your engagement.

Rep. Trey Hollingsworth (R-IN)

2021-10-19 Rep. Trey Hollingsworth SEC QFR

Tick Sizes:

Chair Gensler, It has come to my attention that the MEMEX recently submitted to the SEC a request for exemptive relief under subsection c of Rule 612. Rule 612, or the “Sub-Penny Rule” as it is known, prohibits market participants from displaying quotes, or accepting or ranking orders, in increments of less than 1 cent in any stock that trades for more than one dollar per share. The request for exemptive relief would allow market participants to quote in half-penny increments for stocks that consistently trade with an average quoted spread of 1.1 cents or less.

As you are aware, I have raised this issue with you in previous hearings and letters. As currently implemented, Rule 612 has distorted price discovery, and increased transaction costs for investors in a number of actively traded securities. The impact of penny quoting is particularly felt in low-priced securities that trade in the one to twenty dollar range and certain liquid ETPs.

Mr. Chairman, can you please confirm that you will prioritize updating Rule 612 within Reg NMS and offer serious consideration to any requests for exemptive relief from the Sub-Penny Rule as you conduct the reviewing process?

I have asked the staff to develop recommendations with regard to equity market structure for consideration by the Commission. In this regard, among other matters, I've asked staff to consider whether adjusting minimum tick sizes, reevaluating what is included in the National Best Bid and Offer, enhancing disclosure, payment for order flow, on-exchange rebates, access fees, or leveling competition between trading venues and wholesalers could increase transparency and competition. Minimum tick sizes and Rule 612 is one area that I've asked staff to consider when making recommendations.

NBBO:

Chair Gensler, you have articulated concerns about a number of aspects of the regulatory framework governing U.S. equity market structure, including practices such as payment for order flow and the increased trading activity away from “lit” exchanges. You have noted, however, that any changes need to be made in the context of comprehensive market structure reforms. I have serious concerns about the impact that dramatic reforms to the current regulatory framework could have on the retail investor experience and access, which has arguably never been better with low-cost trading and successful order execution for those investors. Instead of dramatically upending the existing equity market structure, have you considered less disruptive, incremental steps that could be taken to enhance the

tools available to measure execution quality to ensure that retail customers are, in fact, getting the best outcomes possible?

- For example, you have noted that the current benchmark for measuring execution quality – the National Best Bid and Offer, or “NBBO” – is “an old measuring stick” that “does not reflect the full market.” Before taking drastic steps such as banning payment for order flow and risking a return to high-cost, commission-based trading for retail investors, shouldn’t the SEC consider more measured alternatives such as updating the NBBO benchmark to include the full set of order information that is available in the marketplace, including odd lots and depth of book information?

As noted above, I believe that our market structure should provide investor orders with an opportunity for the best possible execution. I have not reached any conclusions in this area and have asked the staff to develop recommendations for consideration by the Commission, including possible reevaluating what is included in the National Best Bid and Offer.

Exchange Rebates:

Following up on my previous comment about the recent trading trends away from exchanges, I encourage you to take a balanced approach to any changes made to the regulatory framework related to US capital market structure in order to ensure that all market participants have regulatory parity.

- Do you agree that displayed liquidity provided by exchanges enables buyers and sellers to transact efficiently?
- Do you agree that exchange rebates play a central role in the price discovery process? Do you have any concern about the negative impacts to overall market quality and retail execution quality if the Commission were to eliminate exchange rebates?

As noted above, I have not reached any conclusions with regard to equity market structure and have asked the staff to develop recommendations for consideration by the Commission. In this regard, I’ve asked staff to consider the potential conflicts of interest in the context of payment for order flow and on-exchange use of rebates. Your concerns with potential impacts is something I expect staff to consider when making recommendations.

E-Delivery:

Chairman Gensler, during your first appearance before the Committee in April as SEC Chair, you agreed with me that e-delivery of brokerage documents should be prioritized during your tenure. Unfortunately, the SEC’s regulatory agenda released in June did not

contain any mentions of updating the rules governing electronic delivery of brokerage documents to American investors.

Please explain why this important regulatory reform was omitted from your agenda and detail what immediate steps you will take to increase the electronic delivery of trade confirmations, prospectuses, and account statements to millions of Americans?

I agree that evolving technology provides opportunities to improve investor experience with regard to the Commission's disclosure framework. In order to realize the benefits that technology can bring to the investor experience, it is important to focus on and consider how to leverage technology to improve the content of disclosures and meet the different needs of different types of investors.

The Commission has already proposed substantial modifications to fund shareholder reports, including a modernized, layered disclosure framework that would promote the use of interactive, user-friendly design features to present certain fund information electronically. The staff is reviewing comments received and is considering recommendations regarding this proposal, as reflected on the short-term Regulatory Flexibility Act agenda. We will continue to evaluate the ways in which we can modernize, where possible, to the benefit of investors.

Treasuries Reform:

I believe it's long overdue to make some commonsense updates to the market structure for US Treasuries. In recent years, the SEC has highlighted the need for greater public transparency into the US Treasury market, and I was encouraged to see that you highlighted the importance of reforms to the Treasury market in your recent testimony before the Senate Banking Committee.

- **One of those reforms is to bring Treasury markets on par with other bond markets, like our corporate and municipal bond markets, and bring more real-time public transparency into the marketplace. Public transparency can increase resilience, competitiveness, and liquidity. Do you agree we should take further steps towards bringing greater transparency to this critical market?**

As outlined in a recent speech at the U.S. Treasury Market Conference, there is much work that can be considered to bring greater efficiency, competition and transparency; market integrity; and resiliency to the \$23 trillion Treasury markets.¹ The SEC plays a critical role in our overall efforts to improve the functioning of the Treasury market. I've asked staff to make recommendations for the Commission's consideration to freshen up our rules to reflect the state of the Treasury market today.

¹ <https://www.sec.gov/news/speech/gensler-us-treasury-market-conference-20211117>

One work stream relates to data quality. Currently, the Trade Reporting and Compliance Engine ("TRACE"), a facility operated by FINRA, facilitates the mandatory reporting of over-the-counter transactions in Treasury securities. TRACE does not publicly disseminate any information about these individual transactions. Further, only broker-dealers that are registered with FINRA, however, report Treasury transactions to TRACE, leaving out major market participants like commercial banks and proprietary trading firms. I support the Federal Reserve's recently announced new rule requiring large banks to report transactions to TRACE. I've asked staff to continue to work with FINRA, the Department of the Treasury, and the Federal Reserve to consider further enhancements to TRACE. In part to help make the TRACE data set more comprehensive, I have directed the SEC staff to consider whether non-bank firms that significantly trade in the Treasury market should be registered as dealers with the SEC and required to become TRACE-reporting members of FINRA.

Rep. David Kustoff (R-TN)

Chair Gensler, as you know, the fixed income markets are very different from equity markets, and each needs rules tailored specifically to it. I would like to raise with you today SEC rule 15c2-11 as it applies to fixed-income securities.

Market participants have recently become concerned that the application of this equities market-focused rule to fixed-income securities would deter quotation activity in a manner that would diminish, not increase, transparency. I am further concerned that the application of a rule designed around equity markets could upend liquidity and reverse recent advancements in electronic trading of bonds in the fixed income markets, which would harm investors and issuers who rely on these markets.

On September 24, 2021 the SEC issued a no-action letter (<https://www.sec.gov/files/rule-15c2-11-fixed-income-securities-092421.pdf>) that provides relief to fixed income markets from the provisions of the rule for just three months. Three months does not seem like enough time for firms to build compliance systems from scratch, and certainly does not seem like enough time to revise a rule to actually work in the market.

- Chair Gensler is the Commission going to maintain that Rule 15c2-11 applies to quotations for over-the-counter fixed-income securities going forward? If so, can you commit to me that the Commission will revise Rule 15c2-11 according to the statutory rulemaking process, providing an opportunity for public notice and comment, so that the rule actually works for these markets instead of hurts them?
- In addition, will the Commission clarify to the markets that it will not enforce Rule 15c2-11 with respect to fixed-income quotations pending the outcome of that process?

Rule 15c2-11 governs the publication or submission of quotations, by a broker-dealer, for securities in a quotation medium other than a national securities exchange. On September 16, 2020, the Commission adopted amendments to Rule 15c2-11 to modernize the Rule; promote investor protection; and improve transparency by, among other things, requiring key, basic information about issuers and their securities to be “current” and “publicly available” in order for a broker-dealer to initiate a quoted market or maintain it. As you mentioned, on September 24, 2021, Commission staff issued a temporary no-action letter regarding fixed income securities in response to indication from market participants that they would be unable to complete by the compliance date the operational and systems changes necessary to comply with the final rule requirements.

As stated in this Sept. 24 staff no-action letter, the recent amendments to Rule 15c2-11 did not alter the types of securities covered by the existing Rule. Since its original adoption in 1971, Rule 15c2-11 has applied to “securities,” a defined term in the Exchange Act that has and continues to include fixed income securities with the exception of “exempted securities” and a specific exception for municipal securities. The Commission also has stated that Rule 15c2-11 applies to fixed income securities.

The Commission staff engaged with the industry to further understand their operational issues in complying with the Rule. On December 16, in response to requests from industry representatives that have indicated they need additional time to complete the operational and systems changes

necessary to comply with the amended Rule for fixed income securities, the staff of the Commission issued a second no-action letter –over three separate phases – to allow for an orderly and good faith transition into compliance with amended Rule 15c2-11.² The amendments to Rule 15c2-11 are designed to modernize the Rule and to enhance investor protection by requiring that current and publicly available issuer information be accessible to investors. This three-phase approach is to further allow for broker-dealers that publish or submit quotations for fixed income securities in a quotation medium to achieve the goals of Rule 15c2-11.

Rep. Barry Loudermilk (R-GA)

House Committee on Financial Services

Full Committee Hearing: Oversight of the U.S. Securities and Exchange Commission

October 5, 2021

Questions for the Record from Congressman Barry Loudermilk (GA-11)

The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission

The definition of a “facility” of a national securities exchange under Exchange Act Section 78c(a)(2) has not been updated in many decades, despite rapid technological and trading evolution which have enabled exchanges to serve investors and members with services never contemplated when the law was enacted.

This regulatory ambiguity allows agency staff to routinely attempt to regulate commercial activity that is unrelated to exchange operations and not regulated when engaged in by non-exchanges. This stifles innovation and the use of modern technologies, making U.S. exchanges less competitive domestically as compared to dark pools and other off-exchange venues, as well as globally for the cross-border flow of capital. It has also triggered needless, costly, and inefficient litigation in federal courts. This demonstrates the need for the SEC to establish clear standards for regulated conduct, a primary job of any regulatory agency.

- **Will the SEC provide clear, certain, transparent guidance that the term “facility” of a national securities exchange under Exchange Act Section 78c(a)(2) is reasonably limited and tied to the modern day operations of an exchange?**

Congress drafted broad definitions and illustrations of the terms “exchange” and “facility” in the Securities Exchange Act of 1934 to ensure flexibility as markets change and evolve. The Commission has

² See Letter from Josephine Tao, Assistant Director, Office of Trading Practices, Division of Trading and Markets to Racquel Russell, Senior Vice President and Director of Capital Markets Policy, Office of the General Counsel, FINRA (Dec. 16, 2021) (Staff No-action Letter Regarding Rule 15c2-11 and Fixed Income Securities) at: <https://www.sec.gov/files/fixed-income-rule-15c2-11-nal-finra-121621.pdf>

frequently applied this definition in responding to rules proposed by national securities exchanges. Recently, the SEC addressed the question of what constitutes a facility of a national securities exchange in an order approving the request of a group of exchanges to provide wireless connectivity services at a data center in northern New Jersey where a significant volume of trading occurs. In its order, the Commission explained that as a system of communication offered by a group of persons providing a market place for bringing together purchasers and sellers of securities, wireless connectivity services are offered for the purposes of effecting or reporting transactions on the Exchanges; and also that these wireless services were using the premises and property of the group of persons providing a market place for bringing together purchasers and sellers of securities for such purposes. The D.C. Circuit affirmed the Commission's order in a decision entered on January 21, 2022.

Rep. Frank Lucas (R-OK)

October 5 at 10:00 AM: The Committee on Financial Services will hold a virtual hearing entitled, "Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop Is Finally Back on the Beat."

Questions for the Record

Representative Frank Lucas

1. The new reporting regimes for security-based swaps that begin to take effect in November will bring important transparency to the market and the SEC staff and Commissioners should be commended.

With regard to "historical swap reporting", it is my understanding that swaps that were live as of the date of enactment of the Dodd Frank Act (July 21, 2010), but closed at any time thereafter, will still be required to be reported to the SEC. This would include swaps, for example, that terminated in 2010, over 11 years ago. By comparison, the CFTC's historical swap reporting regime launched much closer to the date of enactment, so it had a much shorter "lookback" period for the reporting of old swaps. ESMA eventually removed their backloading requirement for EMIR purposes.

Is it the SEC's intent to require reporting of swap transactions that closed out many years ago, or is this an unintended consequence of the SEC's timing? What would be the value of requiring this data, and if the costs would potentially outweigh the benefits, would the SEC be able to request this data from firms on an as needed basis or otherwise shorten the time horizon by where closed contracts must be reported?

The SEC's Regulation SBSR requires reporting of historical security-based swaps. Congress directed the Commission to promulgate a rule requiring all security-based swaps that were open as of the date of enactment or opened after the date of enactment to be reported to a Swap Data Repository. Consistent with the Congressional mandate, these data will allow for a comprehensive overview of the market. That said, the SEC's rule about historical transactions requires reporting only to the extent that information about those transactions "is available." No one has to attempt to recreate and then report transaction data that are no longer available.

2. In February, then-Acting SEC Chair Allison Herren Lee directed the Division to review the 2010 "Commission Guidance Regarding Disclosure Related to Climate Change." Is this sample letter a product of this review? Did the Division engage with public companies, as directed, before developing this sample letter? If so, where can my office identify the names of the public companies involved in that consultation and the sectors they represent?

The sample letter was written by staff of the Division of Corporation Finance to help provide guidance to companies as to some of the types of climate-related disclosure issues that the Division may consider in reviewing companies disclosures under existing disclosure rules. The sample letter drew on the Commission's 2010 guidance, the staff's review of filings, and other sources. Any staff comment letters issued to individual companies will be made available on the Commission's website for public review as soon as 20 days after the completion of a review.

3. **Does the SEC plan on conducting any stakeholder outreach to public companies or trade associations representing public companies in advance of issuing a proposed rule to mandate climate-related disclosures? If not, how can my office be assured that you are appropriately considering the concerns and recommendations raised in written comments by regulated entities that have unique business impacts and opportunities related to climate change?**

We encourage public engagement and have multiple means to ensure that stakeholders are able to share their views. We have benefited from the input that the public submitted this spring in response to the request for public input issued by then Acting Chair Lee. We have since had a number of discussions with different stakeholders, including investors, issuers, and trade groups, and will continue to do so. If the Commission proposes a rule, we will publish any such rule proposal for public comment and would consider the views expressed in those comment letters as we consider any final rules.

Rep. Carolyn B. Maloney (D-NY)

Questions for the Record

Hearing: “Oversight of the U.S. Securities and Exchange Commission: Wall Street’s Cop Is Finally Back on the Beat”

Date of Hearing: October 5, 2021

Member: Rep. Carolyn B. Maloney

Chair Gensler, at your Senate nomination hearing and in subsequent hearings, you’ve briefly spoken on e-delivery requirements for consumer communications. You noted your general support, and said you hope we can continue to look at doing so while protecting investors and ensuring they receive the proper disclosures. I agree – we must ensure that investors are appropriately protected. At the same time, the SEC hasn’t comprehensively updated its regulatory framework for electronic delivery in over 20 years. A lot has changed during the last twenty years and many consumers’ preference have also changed in that time.

- **Chair Gensler, what are your plans to reform the Commission’s e-delivery framework?**
- **And do you support making e-delivery the default method, subject to the important investor protections and the ability to opt for paper documents at any time?**

I agree that evolving technology provides opportunities to improve investor experience with regard to the Commission’s disclosure framework. In order to realize the benefits that technology can bring to the investor experience, it is important to focus on and consider how to leverage technology to improve the content of disclosures and meet the different needs of different types of investors. The Commission has already proposed substantial modifications to fund shareholder reports, including a modernized, layered disclosure framework that would promote the use of interactive, user-friendly design features to present certain fund information electronically. The staff is reviewing comments received and is considering recommendations regarding this proposal, as reflected on the short-term Regulatory Flexibility Act agenda. We will continue to evaluate the ways in which we can modernize, where possible, to the benefit of investors.

Ranking Member Patrick McHenry (R-NC)

Committee on Financial Services Republicans – 10/5/21 Full Committee Hearing: “Oversight of the U.S. Securities and Exchange Commission: Wall Street’s Cop Is Finally Back on the Beat” – Hon. Patrick McHenry Questions for the Record³

ESG Rulemakings

- 1. The Consolidated Appropriations Act, 2021, Public Law No. 116-260, instructed the SEC to deliver two reports about small issuers by June 2021 – one on analyst research and one about the effects of the 10% limitation on investments by investment companies. These reports are now months overdue. What is the estimated timeframe for delivery of these reports?**
 - a. Will you commit to completing those reports before engaging in further rulemaking?**

SEC staff are in the process of preparing the requested reports based on a review of relevant legal and regulatory requirements, academic literature, and available data. These are important topics that require careful consideration and evaluation of a number of issues. We expect to complete the reports shortly.

- 2. In a speech on October 12, 2021, you noted that certain digital engagement practices “could be based upon data that reflects historical biases” and stated that the Commission has a role in ensuring that the capital markets “don’t instead reinforce societal inequities.”⁴ Please provide an explanation of the provisions of law that provide the Commission with the authority to address “societal inequities,” and any limitations on the Commission’s ability to create marketplace or disclosure rules relating to societal inequities.**

The Commission’s long-standing tripartite mission—to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation—remains our touchstone. Various provisions in the federal securities laws authorize the Commission to implement this mission.

When the Commission announced that it was requesting information and public comment on matters related to the use of digital engagement practices (“DEPs”) by broker-dealers and investment advisers (the “Request”), I stated that, while new technologies can bring us greater access and product choice, they also raise questions as to whether we as investors are appropriately protected when we trade and get financial advice. I also noted that I am particularly focused on how we protect investors engaging with technologies that use DEPs.

³ All references to “you” or “your” herein refer to Chair Gensler and his office.

⁴ See Gary Gensler, “Prepared Remarks at SEC Speaks” (Oct. 12, 2021), available at <https://www.sec.gov/news/speech/gensler-sec-speaks-2021-10-12>.

Accordingly, the Request provided an opportunity for investors and other market participants and interested parties to share their perspectives on the use of DEPs and the related tools and methods, and the potential benefits to retail investors, as well as potential investor protection concerns, including in connection with the practices I touched upon in my October 12, 2021 speech.

The Request will help facilitate an assessment by the Commission and its staff of existing regulations and consideration of whether regulatory action may be needed to further the Commission's mission including protecting investors and maintaining fair, orderly, and efficient markets in connection with firms' use of DEPs and related tools and methods.

- 3. Is there any limitation under current SEC legal authority for the Commission to address a non-investment-return related social goal if three Commissioners determine a rule designed to attack such a social goal is in the public interest? If in your view such a limitation exists, please describe examples of such goals that the SEC may not seek to address under current authorities.**

The SEC's statutory authority is generally premised on promulgating rules that are in the public interest and consistent with the protection of investors, as well as its other statutory mandates. Whenever the SEC is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, it also must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. I am confident that any rules the Commission proposes will be consistent with these statutory provisions and our long-standing tripartite mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

- 4. You often say that “investors want” ESG disclosures.⁵ What is the rule or standard you use for investor desire and whether that desire is worthy of SEC resources and mandatory disclosure, given that a majority of shareholder proposals on almost every topic do not win a majority of votes at public companies?**

- a. Are there topics of potential disclosures that, under your rule or standards, investors “want” but that are not on your proposed rulemaking agenda?**

When the SEC conducts rulemaking, we consider, among other things, whether the proposed rules are in the public interest and consistent with the protection of investors. The Commission's

⁵ See, e.g., Bob Pisani, “SEC Chair Gensler Says Investors Want Mandatory Disclosure on Climate Risks”, CNBC (Jul. 28, 2021), available at <https://www.cnbc.com/2021/07/28/sec-chair-gensler-says-investors-want-mandatory-disclosure-on-climate-risks.html>.

staff evaluates the information available when formulating rule proposals for consideration by the Commission. After we have proposed rules for public comment, we consider the comments submitted by the full range of stakeholders, including investors. We consider these letters carefully when crafting final rules. Where investors express a reasoned desire for certain information to inform their investment and voting decisions and processes, we take that input into account as well as the input of other stakeholders. Our Division of Economic and Risk Analysis also conducts economic analyses of rule proposals that evaluate a number of factors and data sources, including the comment letters received with regard to the proposals.

5. What types of modeling are you and the SEC staff doing to determine which form of additional climate-related disclosures will yield the most informative disclosures for investors?

SEC staff is considering available data and information to better understand what climate-related disclosures investors are currently using to make informed investment decisions and how those disclosures could be improved to be more consistent, comparable, and decision-useful. The staff's analysis will be reflected in any proposed rulemaking so that we can receive public comment on what disclosures would best serve investors.

6. Does the SEC currently employ any climatologists or environmental scientists who have the capacity to review detailed climate-related disclosures (e.g., "Scope 3" disclosures) for veracity?

a. If no, are you planning on hiring climatologists or environmental scientists to help with your climate change disclosure rulemaking?

b. Given that Commission resources are limited, what program or programs do you intend to cut in order to build out the SEC's offices that can appropriately review the new disclosures you intend to put into place?

In our rulemaking, we will seek public comment on a variety of issues and hope to gain useful input from a range of stakeholders, including appropriate experts. We also consult with outside experts as appropriate and conduct our staffing in a manner designed to enable us to fulfill our mission, balancing the demands on our staff time and the range of issues that arise. The focus of considerations remains on investors and their needs for decision-relevant information, as well as other aspects of our statutory mandate.

- 7. Questions have been raised about the SEC's statutory authority to adopt mandatory disclosure rules on climate-change and other ESG issues. Please cite the specific statutes that you believe authorize the SEC's current effort to propose such disclosure rules.**
- a. If the SEC proposes such rules, will you commit to including a more than cursory explanation of the SEC's statutory authority in the proposing release?**

The staff are working on several recommendations related to climate change and other ESG issues in the Divisions of Investment Management and Corporation Finance, which have different statutory underpinnings based on the specific rules that may be the subject of the proposals. Before proposing any rules under the Securities Act, Exchange Act, Investment Advisers Act and/or Investment Company Act, the SEC considers its statutory authority to do so and explains in any rulemaking release the basis for the proposed rules, consistent with its obligations under the Administrative Procedure Act.

- 8. Do you believe the SEC currently has the authority to establish or designate a third-party to establish standards to promulgate ESG disclosure requirements? If so, please cite the specific statutes that you believe authorize such a designation.**

I have asked the staff of the Division of Corporation Finance to develop recommendations for the Commission to consider. The staff are currently engaged in that process, including considering how best to structure any recommended disclosure proposals.

As staff put together their recommendations, we have benefited from the input that the public submitted this spring. Among other frameworks and standards, many commenters referred to the Task Force on Climate-related Financial Disclosures (TCFD) framework. I've asked staff to learn from these external sources. As the staff considers the most effective means by which to structure their recommendations, they will remain mindful of the Commission's statutory authority.

- 9. Complying with disclosures diverts company resources and costs companies money. Large public companies often have vast compliance departments full of specialized lawyers and accountants. Some even have designated ESG compliance offices. Frequently, smaller public companies have few compliance lawyers and accountants that serve as generalists to handle all requisite compliance matters. Are you concerned that the SEC's forthcoming mandatory climate change and other ESG-related disclosures will be easier to comply with and less costly for larger,**

incumbent companies as compared to smaller, younger companies? If so, is the SEC considering exemptions, such as exemptions for smaller reporting companies?

In recommending any rule proposals, the staff provides an economic analysis, including the burdens of any rule proposal, as well as its benefits. We take those factors into account in our rulemaking process. We also ask questions and solicit public input into questions such as whether any different treatment should be afforded companies of different sizes or maturity, among other factors. Of course, we also need to factor in the interests of investors in those companies and how best to protect their interests.

10. The SEC recently approved a board diversity proposal for Nasdaq that would require Nasdaq-listed companies to (a) have at least two diverse directors on its board or explain why not and (b) provide standardized disclosures on the composition of its board. However, identical requirements wouldn't apply to foreign issuers, which have less-stringent diversity requirements.

- a. In recent statements, you raised concerns about risks relating to foreign-related issuers in general and Chinese-based issuers in particular.⁶ Why then did you vote for a proposal that apparently imposes a lesser regulatory burden on China-based companies than American companies?**
- b. Does your approval of this lesser burden for Chinese companies and other foreign issuers mean they can expect preferential treatment under the SEC's forthcoming ESG disclosure rulemakings?**

The protection of investors in our markets is important, whether they invest in U.S. companies or foreign companies. We do sometimes regulate foreign issuers differently than domestic issuers as they are subject to comparable but slightly different disclosure systems. When adopting new disclosure standards, we weigh carefully whether and how to apply the requirements to foreign issuers in the context of existing standards for international cooperation, similarities and differences in foreign disclosure regimes, and the needs of investors in U.S. markets.

11. Commentators have noted that for certain (though not all) identity-based categories that were included in the NASDAQ order, there is no evidence, academic or otherwise, that diversity in those categories leads to better shareholder returns or

⁶ See Gary Gensler, "Statement on Investor Protection Related to Recent Developments in China," (Jul. 30, 2021), available at <https://www.sec.gov/news/public-statement/gensler-2021-07-30>.

higher company valuation.⁷

- a. In your view, are there limits under the federal securities laws on what categories of identity-based disclosures the SEC can force upon public companies with regard to executives or a company's workforce absent concrete evidence of investor or issuer benefit?
- b. Even if, in your view, the securities laws do not provide such limitations, are there any identity-based categories that you believe the SEC *should* not (as opposed to *cannot*) provide disclosure based on privacy considerations? If so, what guiding philosophy or standard will you use to make such determinations for possible disclosures?
- c. Could the Commission force a company to survey its workforce or board members for disclosure of political affiliation?
- d. Do you believe the categories of diversity that you approved in the NASDAQ order are more important than ideological diversity?
- e. Do you believe the categories of diversity that you approved in the NASDAQ order are more important than socioeconomic diversity?
- f. Do you believe the categories of diversity that you approved in the NASDAQ order are more important than religious diversity?
- g. Do you believe the categories of diversity that you approved in the NASDAQ order are more important than diversity of geographic background?
- h. Are there other categories of diversity that you believe are more important than those categories approved in the NASDAQ order?

The Commission's approval of this order is currently the subject of legal challenge. Because I cannot comment on pending litigation, I cannot address these questions at this time.

Other Rulemakings

12. When do you anticipate completing SEC rulemaking pursuant to the Holding Foreign Companies Accountable Act?

⁷ See, e.g., letter from Boyden Gray & Associates PLLC on behalf of Alliance for Fair Board Recruitment, dated April 6, 2021, available at <https://www.sec.gov/comments/sr-nasdaq-2020-081/smasdaq2020081-8639478-230941.pdf>.

On December 2, 2021, the Commission adopted amendments to finalize rules implementing the submission and disclosure requirements in the Holding Foreign Companies Accountable Act (HFCAA) by amending Forms 20-F, 40-F, 10-K, and N-CSR. On that date, the Commission established procedures to identify, as required by that statute, issuers that have filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board (PCAOB) is unable to inspect or investigate completely. The Commission also established procedures to prohibit the trading of the securities of certain registrants as required by the HFCAA. On December 16, the PCAOB notified the Commission of its determinations that it is unable to inspect or investigate completely registered public accounting firms headquartered in mainland China or Hong Kong. Staff is now preparing to follow the procedures described in the December 2 release.

13. What important capital formation projects do you intend to complete within the next calendar year?

Facilitating capital formation, along with protecting investors and maintaining fair and orderly markets, is the mission of the Securities and Exchange Commission. Cost-effective access to capital for companies of all sizes plays a critical role in our national economy. We are continuously assessing what is working, what barriers may exist in the facilitation of capital formation, and how well we are serving investors interests in public and private markets. It is important to ensure that investors have access to material information and the liability protections that help to support investor confidence in our markets. In this regard, the SEC's Fall, 2021 Regulatory Agenda includes several initiatives on which staff is developing recommendations for consideration, including enhanced disclosure on a variety of topics of great importance to both companies and investors. As we potentially move forward with these initiatives, we will carefully weigh the public comments and economic analysis in balancing concerns relating to the impact on companies participating in the U.S. markets with the regulatory purpose of the rules.

14. Will you commit to completing the gig-worker equity compensation rulemaking that was proposed last year?⁸

The Commission is considering rulemakings in a number of areas. The Fall 2021 regulatory agenda includes a list of the short-term and long-term regulatory actions that I anticipate the Commission will consider. I expect that the Commission will continue to monitor developments

⁸ See "SEC Proposes Temporary Rules to Facilitate Measured Participation by Certain 'Platform Workers' in Compensatory Offerings Under Rule 701 and Form S-8" (Nov. 24, 2020).

in employment arrangements and equity compensation to determine what regulatory steps should be taken consistent with our three-part mission, including whether to proceed with the previously proposed temporary program that would permit an issuer provide equity compensation to certain “platform workers” who provide services available through the issuer’s technology-based platform or system.

15. On September 27, 2021, the SEC’s Asset Management Advisory Committee (AMAC) recommended individual investors be given increased access to invest in private funds. This would provide more investment opportunities to all Americans. Will you commit to taking up the AMAC recommendations within the next year?

The AMAC issued a Final Report and Recommendations for Private Funds on September 27, 2021. The Final Report and Recommendations acknowledges the need to balance wider access with investor protection. In February, concerns about investor protection in the private fund market prompted the Commission to propose a set of reforms to the rules governing private fund advisers. I look forward to the comments on this set of proposals. I also look forward to hearing input from the members of the SEC’s Division of Investment Management who are reviewing the Final Report and Recommendations.

16. The SEC recently proposed amendments to Form N-PX. In a public statement alongside the proposal, Commissioner Peirce noted that she asked for the inclusion of a question about whether the mandatory public disclosure of fund votes should be eliminated altogether. Had that question been included, that vote would have been 5-0 instead of 4-1.⁹ Adding a question to a proposing release does not have serious substantive effect, but does allow for more robust debate and discussion.

- a. Why did you not allow for Commissioner Peirce’s question to the N-PX rulemaking proposal be included in the release?**
- b. Will you commit to more robust and fully bipartisan proposals going forward?**

Consulting with all of the other members of the Commission is important to me as chair of the agency. During the open meeting for the Form N-PX proposal, we discussed the question Commissioner Peirce raised and the questions included in the proposing release about the form’s economic impact. I am particularly interested in whether the proposal could bring

⁹ See Hester Peirce, “Statement on Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers” (Sept. 29, 2021), available at <https://www.sec.gov/news/public-statement/peirce-open-meeting-2021-09-29>.

greater efficiencies. I welcome continued engagement with my fellow Commissioners and the public on this and the other important issues the proposal seeks to address.

- 17. Do you believe that the Commission has legal authority to require any substantive disclosure on private companies? If not, what are the legal bounds to which the Commission is subject, and in your view what types of disclosures would be allowed and disallowed under those bounds?**
- a. Do you agree with Commissioner Lee that it should be a goal of the SEC to increase the number of public companies in part so that “unions bargaining for employee rights and protections [are less likely to] lack important financial information about companies employing tens of thousands of workers”?¹⁰**
 - b. Is providing unions with information about private companies a permissible goal for the Commission under the federal securities laws? If so, please provide an explanation of the provisions of law that provide the Commission with the authority to address that goal.**
 - c. That concern aside, do you agree with Commissioner Lee that the Commission should redefine shareholders of record under Securities Exchange Act section 12(g) in order to force more companies into the public markets?**

Over the last four decades, the Commission has adopted several rules to create safe harbors from registration requirements under Section 5 of the Securities Act. These regulations provide issuers with greater certainty than statutory exemptions alone. Many of these existing regulatory transaction and resale exemptions include disclosure requirements.

Our focus in drafting or amending disclosure rules has been in serving our three part mission. Commission-required disclosure is intended to help investors make investment decisions, facilitate capital formation, and promote fair, orderly and efficient markets.

As noted in the Fall 2021 regulatory agenda, staff in the Division of Corporation Finance are considering recommending amendments to the Commission on the definition of “held of record” for purposes of section 12(g) of the Exchange Act. Our objective, is pursuing the mandates under the federal securities statutes.

- 18. Nearly four years ago the Commission moved on a bipartisan basis from T+3 to T+2. The Commission’s Reg Flex agenda included shortening the settlement cycle.**

¹⁰ See Commissioner Allison Herren Lee, “Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy” (Oct. 12, 2021), available at <https://www.sec.gov/news/speech/lee-sec-speaks-2021-10-12>.

Will you describe the staff progress on proposing such rulemaking?

a. What are your views on the merits of moving to a same-day settlement cycle as compared to the T+2 or T+1 cycle?

On February 9, the Commission approved a proposal regarding the clearing and settling of securities transactions.

First, the proposal would shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. The proposal, if adopted as proposed, would establish a compliance date of March 31, 2024, setting up a transition to T+1 in the first quarter of 2024.

Second, the proposal would require affirmations, confirmations, and allocations to take place as soon as technologically practicable on trade date (“T+0”). These steps are key preparations that must take place prior to settlement. Ensuring that these three key elements of the clearing process take place as soon as technologically practicable on the trade date further lowers risk in the system.

Third, the proposal would require clearing agencies that provide central matching services to have policies and procedures to facilitate straight-through processing — i.e., fully automated transactions processing.

Lastly, the proposal includes a robust discussion and request for comment on shortening beyond T+1 to same-day settlement, or “T+0.” In the proposal, we use “T+0” to refer to shortening the settlement cycle to the end of trade date, so that netting and other existing risk management tools could continue to serve market participants as they do today. We try to identify potential paths to T+0 and discuss some topics that market participants have previously identified as potential challenges to achieving T+0. We look forward to the comments on this helping us to chart a path to T+0.

Recent SEC Guidance and Other Actions

- 19. Prior to your confirmation, John Coates, the then-Acting Director of SEC’s Division of Corporation Finance and later your Acting General Counsel, made a statement opining whether SPAC mergers were really IPOs. Additionally, alongside the SEC’s Acting Chief Accountant, Coates issued another statement about the accounting treatment of warrants issued in SPAC offerings. A major law firm noted the latter statement effectively froze the SPAC market and added they were unaware of a statement issued without notice and comment that had such a significant chilling effect on activity within our capital markets.¹¹**

¹¹ See Davis Polk, “SEC Statement on Accounting Treatment of Warrants in SPAC Transactions Will Have Significant Near-Term Impact on Capital Markets” (Apr. 14, 2021), *available at*

Then-Acting Director Coates testified before this Committee shortly after those comments and was asked if he determined such significant market-moving statements are appropriate. Mr. Coates' answered that "we believe that the statements were appropriate for protection of investors and for protecting issuers and capital formation."

- a. Do you agree with Mr. Coates' substantive views on both the statements he made?
- b. Do you agree that each of the statements were appropriate for the then-head of the Division of Corporation Finance to make?
- c. In general, are market-moving statements appropriate as guidance rather than appropriate for notice-and-comment rulemaking?

Our capital markets have witnessed an unprecedented surge in non-traditional IPOs by special purpose acquisition companies (SPACs). There are many moving parts and novel aspects to these vehicles, and it is important to consider whether investors are being adequately protected. To reduce the potential for information asymmetries, conflicts of interest (in which certain participants in those markets may have interests that do not align with those of investors), and fraud, I've asked the staff for proposals for the Commission's consideration around how to better align the treatment of SPACs and their participants with the investor protections provided in other IPOs, with respect to disclosure, marketing practices, and gatekeeper obligations.

Staff have made a number of public statements on SPACs to be transparent about their views about how existing laws and regulations apply to SPACs.

Consistent with longstanding practice, staff make statements from time to time as appropriate to respond in real time developments in the market and to alert issuers and investors regarding staff positions on important legal matters under existing laws and regulations.

Any proposals for new regulations regarding SPACs, would be conducted via notice and comment rulemakings, and the Commission would welcome and carefully consider comments received.

20. Rule 15c2-11 was designed to address fraudulent behavior with trading in stocks in the over-the-counter (OTC) market. Not once in the Rule's 50-year history has it been applied to fixed income and there has been no enforcement of the rule by the SEC. By way of instruction, Commissioner Peirce noted in a statement on

https://www.davispolk.com/sites/default/files/2021-06/sec_statement_on_accounting_treatment_of_warrants_in_spac_transactions_will_have_significant_near-term_impact_on_capital_markets.pdf

September 24th that, in adopting amendments to rule 15c2-11 last year, she thought of the rule's application only in the OTC equity context, stating "we are now grappling for the first time with whether the application of the amended rule to fixed-income securities could undermine transparency, rather than enhance it as it is expected to do for equities."¹²

On September 24, 2021 the SEC issued a no-action letter that provides relief to fixed-income markets from the provisions of the rule for three months. As Commissioner Peirce noted, the three months of relief is not enough time to consider if the rule should apply—or how to apply it—to fixed income securities.¹³

- a. Do you intend to maintain that Rule 15c2-11 applies to quotations for over-the-counter fixed-income securities going forward?
- b. Will the Commission revise Rule 15c2-11 according to the statutory rulemaking process, providing an opportunity for public notice and comment, so that the rule works for fixed-income markets instead of unintentionally doing harm? If yes, will the Commission clarify that it will indefinitely suspend enforcement of Rule 15c2-11 with respect to fixed-income quotations pending the outcome of a rulemaking process?

Rule 15c2-11 governs the publication or submission of quotations, by a broker-dealer, for securities in a quotation medium other than a national securities exchange. On September 16, 2020, the Commission adopted amendments to Rule 15c2-11 to modernize the Rule; promote investor protection; and improve transparency by, among other things, requiring key, basic information about issuers and their securities to be "current" and "publicly available" in order for a broker-dealer to initiate a quoted market or maintain it. As you mentioned, on September 24, 2021, Commission staff issued a temporary no-action letter regarding fixed income securities in response to indication from market participants that they would be unable to complete by the compliance date the operational and systems changes necessary to comply with the final rule requirements.

As stated in this Sept. 24 staff no-action letter, the recent amendments to Rule 15c2-11 did not alter the types of securities covered by the existing Rule. Since its original adoption in 1971, Rule 15c2-11 has applied to "securities," a defined term in the Exchange Act that has and continues to include fixed income securities with the exception of "exempted securities" and a specific exception for municipal securities. The Commission also has stated that Rule 15c2-11 applies to fixed income securities.

The Commission staff engaged with the industry to further understand their operational issues in complying with the Rule. On December 16, in response to requests from industry representatives that have indicated they need additional time to complete the operational and systems changes necessary to comply with the amended Rule for fixed income securities, the staff of the

¹² See Hester Peirce, "Statement on Staff No-Action Letter Regarding Amended Rule 15c2-11 in Relation to Fixed-Income Securities," (Sept. 24, 2021), available at <https://www.sec.gov/news/public-statement/peirce-na-l-rule-15c2-11-2021-09-24>.

¹³ See *id.*

Commission issued a second no-action letter –over three separate phases – to allow for an orderly and good faith transition into compliance with amended Rule 15c2-11. The amendments to Rule 15c2-11 are designed to modernize the Rule and to enhance investor protection by requiring that current and publicly available issuer information be accessible to investors. This three-phase approach is to further allow for broker-dealers that publish or submit quotations for fixed income securities in a quotation medium to achieve the goals of Rule 15c2-11.

21. When do you anticipate releasing the SEC staff report on so-called “meme stock” trading and associated market volatility in January 2021?

On October 14, 2021, the staff released the report titled “Staff Report on Equity and Options Market Structure Conditions in Early 2021,” which is publicly available at the following link: <https://www.sec.gov/files/staff-report-equity-options-market-structure-conditions-early-2021.pdf>

22. We appreciate your answers to Ranking Member Huizenga’s questions at the hearing regarding the PCAOB and the decision to fire Chairman Duhnke and require the re-application of the remaining Board members. We know, however, that two Commissioners objected to the Commission actions.¹⁴

- a. **Did Commissioner Lee vote to approve these actions? If yes, did she receive approval or a waiver from the Office of Ethics Counsel?**
- b. **To your knowledge, did Commissioner Lee order a review of the PCAOB organization when she was Acting Chair and, if so, is that review still ongoing?**
- c. **If the review is ongoing (and thus is now subject to your oversight), how is this review not redundant with the taxpayer-funded report produced by Kalorama Legal Services that has already been released to the public?¹⁵**

The Commission is tasked with the oversight of the PCAOB. Commissioner Lee voted to approve the removal of Chairman Duhnke and the solicitation of nominations for new Board Members. Each Commissioner works closely with the Ethics Office to determine, based on facts and circumstances known to them, whether their participation in any specific matter is permissible.

¹⁴ See Hester Peirce and Elad Roisman, “Statement on the Commission’s Actions Regarding the PCAOB,” (June 4, 2021), available at <https://www.sec.gov/news/public-statement/peirce-roisman-pcaob-2021-06-04>.

¹⁵ See Kalorama Legal Services, Report on the Corporate Governance of the Public Company Accounting Oversight Board (Jan. 10, 2021), available at https://republicans-financialservices.house.gov/uploadedfiles/kls_pcaob_governance_report.pdf.

I cannot comment on any review at this time, including whether one exists, because of the non-public nature of any such possible review.

SEC Operations

- 23. You recently asked for a significant increase in appropriations in part because of a lowered headcount in recent years. Has the SEC staff received raises over the course of the past year? If yes, please describe those raises, and please explain why it is appropriate to use such funds to give current staff raises instead of hiring additional staff.**

The SEC makes determinations regarding compensation consistent with statutory mandates that require the Agency to maintain comparability with other financial regulatory agencies. All compensation is negotiated with our labor union in accordance with statutory collective bargaining requirements and is strategically calculated to help ensure our overall compensation package enables us to recruit and retain a highly skilled professional staff in a highly competitive labor market.

In April 2021, employees received an annual increase of 5.3% that provided both cost of living and merit/performance components, consistent with the typical practice in other financial regulatory agencies and private sector entities. This adjustment helps ensure a competitive compensation package necessary to recruit and retain mission-critical talent. In that same year, we hired 292 new employees in order to address attrition and fulfill our critical mission.

- 24. It was recently reported that the SEC signed a 1.2 million square foot lease to relocate its headquarters. Given that there is no firm timetable for a return to full in-person operations at the Commission, and given that the staff has been able to operate with some efficacy from home, please explain why the Commission signed a new lease with such a large office-space footprint.**

Since 2011, leasing requirements for all of the SEC's office locations have been administered by GSA, which is responsible for site selection decisions, including the decision to relocate the SEC's Headquarters operations. The SEC began working through GSA to secure a leased space for SEC Headquarters operations in late 2015. In September 2021, GSA announced the award of a lease for the SEC's Headquarters operations. GSA conducted negotiations and signed the lease with the awardee on September 30, 2021. We will be working closely with GSA to address the SEC's spacing needs in the post-pandemic environment.

- 25. When do you anticipate hiring full-time heads of all major Divisions at the Commission, including Trading and Markets, the Division of Investment**

Management, and the Division of Examinations?

The Directors of the Divisions of Enforcement, Economic and Risk Analysis, and Corporation Finance started work at the SEC earlier this year. The new Director of Trading and Markets and the new Director of Investment Management both began work in December 2021. The hiring process for the Director of Examinations is ongoing.

26. The EDGAR Business Office recently announced that it is considering changes to the EDGAR filing system.¹⁶ Will you commit to a significant reconsideration of the filing system overall, so that the Commission isn't beholden to decades-old technology going forward and hopefully will put an end to so-called "fake filings"?

The SEC is in the middle of a multi-year, multi-phase effort to modernize the EDGAR system. For example, in 2020 and 2021, the EDGAR Business Office (EBO) completed a significant modernization of EDGAR technology, including the addition of enhanced EDGAR search functionality and a data application programming interface (API).

EBO is currently engaged in a project to improve EDGAR access and user management using Login.gov, multifactor authentication and individual user accounts. This effort was the subject of a Commission request for comment issued on September 30, 2021. Among other benefits, these proposed enhancements would help mitigate the risk of fake filings.

EBO works closely with SEC divisions and offices to address suspicious filings. In 2020, the Commission clarified EBO's authority to prevent acceptance of filings and/or remove certain filings from EDGAR when filer corrective disclosure is not sufficient. EBO performs heightened scrutiny of all requests to gain access to EDGAR to make filings and flags any requests that contain an indicia of possible fraud. In 2019, EBO also formed a new branch devoted solely to the heightened scrutiny of highest-risk access requests.

¹⁶ See "EDGAR Next-Improving Filer Access and Account Management" (Sept. 30, 2021), available at <https://www.sec.gov/oit/announcement/edgar-next>.

Rep. Bryan Steil (R-WI)

Questions for the Record

Full Committee Hearing: Oversight of the U.S. Securities and Exchange Commission

October 5, 2021

Rep. Bryan Steil

Digital asset ETFs

1. In remarks before the Aspen Security Forum, you seemed to indicate that ETFs that invest in Bitcoin futures, as opposed to investing in the spot market, may have a better likelihood of approval from the Commission because the "'40 Act provides significant investor protections." By implication, are you indicating that investor protections are lacking under the '33 Act for associated spot market ETFs? How have you come to that judgment?
2. As Chairman, have you personally met with '33 Act ETF applicants, reviewed their data, and had an iterative set of engagements with them to understand their responses to your concerns?
3. Can I – and this Committee – have your commitment that before you make a decision on whether or not to approve a product, you or your senior staff – not just the Trading Markets or Investment Management staff – will meet with applicants in order to have a fulsome set of conversations in order to help market participants understand your concerns over their specific applications and how to address them, and not simply prejudge based on theoretical or academic views?

The statutory framework and the regulatory process for reviewing products under the '33 Act and the '40 Act are different. The Commission continues to carefully consider all exchange-traded products under the frameworks and processes applicable to them. The first of the bitcoin futures ETFs have gone effective and are operating. There are also several bitcoin futures mutual funds that are currently trading. The Commission, and its staff, including senior staff welcome engagement with registrants and their counsel and we continue to invite engagement in this space, in particular.

Co-investment rules for Business Development Companies

In April of 2020, the SEC provided regulatory relief to Business Development Companies (BDC) to promote liquidity and flexibility during the economic downturn caused by the pandemic.

Specifically, the SEC allowed more flexibility for BDCs in calculating their asset coverage and also provided follow-on flexibility for co-investments.

Follow-on flexibility for co-investments allowed BDCs to deploy their capital to support Main Street Businesses while protecting individual retail investors in BDCs.

4. Do you intend to make these flexibilities permanent?

The Commission provided a temporary exemptive order to BDCs, which expired on December 31, 2021. The order addressed the issuance and sale of senior securities and, for BDCs with existing co-investment orders, participating in follow-on investments that would otherwise be prohibited. Commission staff subsequently stated that it would not recommend enforcement action with respect to BDC follow-on investments that is set to expire on March 31, 2022. The Commission is aware of requests by BDCs for similar relief and continues to assess requests.

Rep. Nikema Williams (D-GA)

Williams (GA) Questions for the Record House Committee on Financial Services

**Full Committee Hearing: “Oversight of the Securities and Exchange Commission:
Wall Street’s Cop is Finally Back on the Beat”**

October 5, 2021, at 12PM

Our job on this committee is to make sure our financial system works for all the people. As we build back from an economically devastating pandemic, what people need right now is stability. They don't need Washington arguing over whether the federal government is going to pay its own bills.

Right now, Republicans have a choice. They can join Democrats in addressing the debt ceiling – something that has been done seven times in the last ten years, each time on a bipartisan basis – or they can play political games. Personally, I’ll choose doing what’s right for our people and our economy.

- 1. Chair Gensler, if Republicans refuse to join Democrats in addressing the debt ceiling, what would the impact be in the everyday life of one of my constituents? How would inaction impact people who are trying to get back on their feet and build a better life for themselves and their families?**

Addressing the debt ceiling is simply a choice about whether or not we’re going to allow the government to pay the bills we’ve already agreed to. We can't allow this to continue to be politicized at the risk of our people and economy.

That’s why I’ve cosponsored the *End the Threat of Default Act*, led by my committee colleague Bill Foster and cosponsored by 49 House members including the Majority Leader and Majority Whip. This legislation would eliminate the debt ceiling – and eliminate any impression that we have a choice to *not* pay our bills.

- 2. Chair Gensler, can you tell us about the economic advantages of avoiding debt limit standoffs in the future, and what benefits would this provide my typical constituent?**

Thank you for these two questions. Treasuries are at the heart of our markets. As a result, a default could affect all of our financial markets. While there is a great deal of uncertainty about what would happen in the event of a default, I expect that we would see significant volatility in the markets and perhaps some breakages. Indeed, I would anticipate that we would face some of the greatest challenges we’ve seen in our financial markets.

Rep. Lee Zeldin (R-NY)

Hearing Date: Tuesday, October 05, 2021

Hearing Title: Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop Is Finally Back on the Beat

Requesting Member: Congressman Lee Zeldin

Witness: The Honorable Gary Gensler, Chair, Securities and Exchange Commission

Question for the Record:

Chairman Gensler - In a hearing before the Senate Banking Committee on September 14th, Senator Daines brought up concerns about broker-dealers with financial ties to the Chinese Communist Party (CCP).

You responded that it was important to ensure that U.S. investor data be protected.

Is the SEC considering the risk that when companies with ties to the CCP are invested in U.S. broker-dealers, it is possible that certain predictive data being collected by those broker-dealers could end up being shared with the CCP?

What specific steps is the SEC taking to ensure that data does not flow into the hands of the CCP or any other bad actors?

The Committee on Foreign Investment in the United States ("CFIUS") plays a key gatekeeper role in helping to address some of the concerns your question raises. CFIUS is an interagency committee authorized to review certain transactions involving, among other things, foreign investment in the United States in order to determine the effect of such transactions on the national security of the United States. SEC staff has and will continue to provide technical assistance, as needed, on issues related to foreign investment or ownership in U.S. broker-dealers.

On data protection generally, certain SEC rules including Regulation S-P and Regulation S-ID are intended to protect against bad actors such as hackers and identity thieves. Regulation S-P requires broker-dealers, investment companies, and SEC-registered investment advisers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. Regulation S-ID, which the SEC adopted jointly with the CFTC, requires that certain regulated entities subject to the SEC's enforcement authority that offer or maintain certain types of accounts must develop and implement a written identity theft prevention program designed to detect, prevent, and mitigate identity theft. I've asked staff for recommendations for the Commission's consideration for possible updates of Regulation S-P and other data protection rules.

To fulfill the SEC's mandate to protect investors in U.S. capital markets, we stand ready to continue engagement regarding on-going concerns with data security.

